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Memorandum

TO: Legislative Operating Committee
FROM: Lynn A. Franzmeier, Staff Attorney
DATE: March 12, 2015
RE: Vehicle Driver Certification and Fleet Management: Public Meeting Comment Review

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On February 19, 2015, a public meeting was held regarding adoption of the Vehicle Driver Certification and Fleet Management Law (Law). The Law would update and amend the current vehicle driver certification requirements, including provisions regarding the granting, suspension and reinstatement of vehicle driver certification; govern the use of Tribal vehicles and personal vehicles on Tribal business; require most Drivers to attend training before being eligible to drive a Tribal vehicle; set out when vehicle driver certification can be suspended, including upon a motor vehicle operation *citation* involving drugs or alcohol; clarify a Driver's responsibilities when involved in an accident and prohibit individuals from traveling in Tribal vehicles unless 1) on Tribal business, 2) have permission through OBC motion to travel in a Tribal vehicle, 3) or are being transported as part of a Tribal program or service.

This memorandum is submitted as a review of the oral and written comments received during the public meeting process. The public meeting draft with comments, as well as the comments received, have been attached for your review.

Comment 1. Comment on required training.

From line 48-50 of the analysis: Training is not required for Personal Vehicle certification or for Tribal Vehicle Drivers who are already governed by – and satisfy - other federal/state agency requirements for driver safety training.

Lisa Summers: No, says in addition to 330.7. Where is the rollout plan?

Response

Section 330.7-1(c) states that in order to be vehicle driver certified to operate a Tribal vehicle, Drivers shall "Complete all driver training requirements imposed by the Tribe <u>or</u> an individual Tribal entity <u>or</u> by any federal or state agency regulations. There are no recommended changes based on this comment.

Based on comments 21 & 22 below, there will be time after the adoption of the Law before it becomes effective to ensure there is adequate time to implement the requirements of the Law.

Comments 2, 3 & 68. Comments on what convictions or citations make a driver ineligible.

From line 63-68 of the analysis: Currently, for Tribal Vehicle Certification, a driver must not have been convicted, within the past three years, of various driving violations listed within the Vehicle Driver Certification Policy. This Law no longer lists specific driving violations – instead, for both Tribal and Personal Vehicle Certification, the driver must pass a driving record check by HRD to verify the Driver has not been cited for, or convicted of, a violation which would make the Driver ineligible under this Law.

From Chart starting after line 83: What to report: Any convictions affecting their eligibility to be certified.

Lisa Summers: What is that? How does someone know what to report.
Wendy Alvarez: What citations and/or convictions will make individuals ineligible? HRD currently has a list of violations to look for when running a Driver's Abstract

Response
The intent of the Law is that only driving citations and convictions involving drugs or alcohol would make a driver ineligible for driver certification. If an individual has other citations and/or convictions on their record and still hold a valid license from the State, they can obtain clearance as a Driver by the Tribe. Sections 330.7-1(b) and 330.10-1(b) should be clarified that a driving citation or conviction involving drugs or alcohol are the only citations/convictions that would result in a driver failing a driving record check.

Comment 4 & 60. Comment on reporting all accidents to law enforcement
From Chart starting after line 90 of the analysis:

Accident Reporting

	Tribal Vehicle Drivers [330.12-2]	**Personal Vehicle Drivers [330.12-6]**
What must be reported to law enforcement:	Accidents or damage to Tribal Vehicles that resulted in: • Death • injury requiring medical intervention • damage to property not belonging to the Driver/ Tribe • The Tribal Vehicle being disabled or towed.	All accidents

330.12-2(d) report the accident or damage to local law enforcement if the accident or damage:

Lisa Summers: Both [Tribal vehicle Drivers and Personal Vehicle Drivers] should require all accidents be reported to law enforcement..
Lisa Summers: All accidents should be reported to law enforcement.

Response
During discussions that occurred during the drafting of the Law, it was determined that not all accidents involving Tribal vehicles needed to be reported to law enforcement. For instance, if a Driver backs into a light pole in the parking lot of a Tribal building and there are no physical injuries, law enforcement intervention may not be necessary. This is due to various factors, including the cost of the deductible of the Tribe's insurance and whether repairs will be made to

the vehicle(s) and/or any property involved in the accident. The Law does not prohibit reporting these sorts of accidents to law enforcement, but it is not required. There are no changes recommended based on these comments.

Comment 5. Comment on Travel and Expense Policy.

From the analysis, lines 101-104: New provisions are added to address rental vehicles, which are considered Tribal Vehicles for the purpose of this Law. Drivers must be Tribal Vehicle driver certified; cars must be rented in accordance with the Tribe's Travel and Expense Policy; and the maximum collision damage waiver offered by rental companies must be purchased.

Lisa Summers: 8-3 and 8-10 of the Travel and Expense Policy– what if both employees?

Response

Section 8-3 of the Travel and Expense Policy states that insurance on car rentals is covered by the Tribe's insurance policy and the driver must be on the approved Tribal vehicle drivers list before departure. Section 8-10 states that insurance coverage or charges beyond one driver will be the employee's responsibility and additional drivers will not be approved who are not approved as drivers of Tribal vehicles. There are no changes recommended based on this comment.

Comment 7. Comment on the length of suspensions.

From Chart starting after line 132 of the analysis,

Length of Suspension [330.13 and 330.3-1(j)] **"Workday" is defined as "a regularly scheduled workday or service day for a Driver, regardless of whether the day falls on a weekday or weekend."*	
First suspension	At least 5 workdays
Second suspension	At least 10 workdays
Third Suspension	At least 15 workdays
Fourth or more	3 years

Lisa Summers: Too short; 10 should be 30; 15 should be 45.

Response

Earlier drafts of the Law had higher suspension time frames; however, discussion among the work group determined that lowering the required minimum and leaving it open ended gave supervisors the most flexibility depending on the situation that led to a suspension being necessary. For instance, a supervisor could impose a 30-day suspension for a second suspension, the Law leaves it open, as long as the suspension is at least 10 workdays. There are no changes recommended based on this comment.

Comment 8. Comment on whether a break in employment clears a driver's record.

From line 134 of the analysis: The Law also adds that a break in employment/service of 180 days or more will clear the Driver's record of any prior suspensions.

Lisa Summers: No.

Response

The comment seems to be requesting that a Driver's record not be cleared of any prior suspensions, even if there is a break in employment/service. This is a policy call for the LOC.

Comments 9, 50 & 57. Comments on driving requirement contained within job descriptions.

From lines 157-159 of the analysis: Currently, a supervisor may accommodate an employee by removing the driving requirement from the employee's job description. This language was specifically excluded from the new Law with the intent that this would no longer be an option that could be exercised.

330.9-2. *Vehicle Driver Certification Suspensions Affecting Employment Status.* Individuals who have their vehicle driver certification suspended for more than five (5) days and their ability to perform their duties as an employee affected by that suspension may request, in writing, that their Supervisor and a Human Resources Department representative determine what, if any, options may be available to them.

Lisa Summers: HRD Supervisors may need to rework job descriptions to see who needs driving requirements. Needs to be a BFQ (bonafide qualification).

Shannon Stone: In instances where the suspension of the vehicle driver certification impacts an individual to perform their job duties the law states that the employee may request in writing that their supervisor and HRD jointly decide the options for the employee. Matt Denny pointed out that HRD will under the law contact the supervisor to notify them that the employee's certification has been suspended and this would be a good time for the supervisor and the HRD representative to discuss the option in all cases where an employee loses their certification regardless of duration or request by the employee.

330.10-4. During the hiring process, individuals who are ineligible to be vehicle driver certified shall be notified of their ineligibility in writing by the Human Resources Department.

Lisa Summers: This is why we need to have HR/supervisors go through each job description to ensure its required.

Response

Discussions have occurred with HRD during the drafting of the Law and they have indicated that job descriptions should be reviewed to determine whether a driving requirement is a necessary part of each job. Follow-up with HRD is recommended to determine whether this is something that can be completed after the Law is adopted and before it goes into effect.

Comment 10 & 55. Comment on showing proof of consent to use Tribal vehicle if no supervisor.

From the analysis, lines 165, 173-174: Tribal Vehicle drivers are now responsible for: Providing proof to Fleet Management of any necessary consent to use a non-permanently-assigned Tribal Vehicle.

330.5-1(c) An official or volunteer shall provide proof to Fleet Management that he or she has the consent of his or her Tribal entity to use a Tribal vehicle.

330.10-3. *Mileage Reimbursement.*

(a) A Driver who operates a personal vehicle on Tribal business shall be reimbursed for any business miles driven in his or her personal vehicle if he or she:

…

(3) Had prior consent from the applicable board, committee or commission, if an official

Lisa Summers: How will this be done when there is no supervisor?

Lisa Summers: How are you going to track this?

Response

The Law requires the Driver to show he or she had consent from the applicable entity to use a Tribal vehicle or a personal vehicle on Tribal business. There are no other specific requirements; however, permission could be shown through meeting minutes, email, and/or other approval from the entity or authorized member of the entity, like the Chairperson. The Driver is responsible for providing the proof and the Law does not limit or define what that proof must consist of.

Comments 11 & 49. Comment on appeal of disciplinary or suspension actions.

From lines 239-240 of the analysis: The Law does not identify whether or how any disciplinary or suspension actions could be appealed.

Bob Keck: This isn't a disciplinary Law. If discipline stemming from the enforcement of the Law is given, it would be under a Blue Book policy. Appeals of disciplinary actions would follow Blue Book policy. Regarding appeals, this is true. In going by State rules, there aren't appeals expected if the State revokes/suspends a license. In 330.9- of the proposed Law, it's possible that under 330.9-1(b) and (f) could be appealed, perhaps (g). Recommendation, add to the Law that appeals can be made to the Supervisor's Supervisor. This would mirror an existing process.

Shannon Stone: Could a person appeal the suspension of their vehicle driver certification? This was less clear. Matt Denny made one point that if the state said a person was not licensed or had their license to drive revoked there is nothing to appeal because people cannot drive for the Tribe without a valid driver's license. However, in cases where the Tribe may determine it is in the best interest of the Tribe to revoke an individual's vehicle drive certification there was less clarity but Matt suggested that it should still be unappealable. Discussion with Bob Keck revealed that he may feel that there should be consideration for an appeal process where the suspension results do not originate from the state removing driver privileges.

Response

If the LOC wishes to allow appeals be made under this Law, the commenter's recommendation could be incorporated into the Law.

Comments 12. Comment on notifying officials and volunteers of ineligibility.

From lines 243-247 of the analysis: 330.10-4 states that "During the <u>hiring</u> process, individuals who are ineligible to be vehicle driver certified shall be notified of their ineligibility in writing by [HRD]. Drivers who become ineligible to be vehicle driver certified after being hired shall be notified of their ineligibility <u>by their Supervisor</u> and in writing by [HRD]." There is no hiring process for officials or volunteers, and they do not have supervisors.

Bob Keck: Recommendation – Add clause stating that HRD, the area responsible for driving record checks, also notify officials and volunteers in writing of ineligibility.

Response
If the LOC agrees, the commenter's recommendation could be incorporated into the Law.

Comment 13. Comment on options for volunteers/officials when a suspension affects their duties.

From the analysis lines 248-251: 330.9-2 sets out how an employee whose vehicle driver certification is suspended can request a meeting with HRD and their supervisor to determine what options are available to them if the suspension affects their ability to perform their duties, but there is no similar provision for officials and volunteers.

Bob Keck: Correct. Recommendation – Clarify that elected officials can also meet with HRD the same as an employee can. Other officials such as those who serve on boards, and volunteers, would not have this option.

Response
If the LOC agrees, the commenter's recommendation could be incorporated into the Law. However, the comment seems to say that appointed officials wouldn't have this option, but it may be more appropriate to treat all officials, whether elected or appointed, consistently.

Comment 14. Comment on disciplinary action officials or volunteers.

From the analysis, lines 252-254: 330.15-1(i) requires supervisors to implement disciplinary action against Drivers who violate this Law, in accordance with the Personnel Policies. However, those do not apply to officials or volunteers, and again, they may not have supervisors.

Bob Keck: Correct. I don't believe there is an answer for this consideration. In lieu of discipline, officials or volunteers may simply not be an approved/certified driver.

Response
There are no recommended changes based on this comment.

Comment 15. Comment on officials/volunteers and drug/alcohol testing.

From the analysis, lines 255-262: 330.12-2(c) requires Tribal Vehicle drivers to comply with any alcohol/drug testing requirements under the Tribe's Drug and Alcohol Free Workplace Policy (DAFWP). However, that Policy specifically only applies to employees, and not to officials, and it appears it would not apply for volunteers. Under the DAFWP [section 8-3], employees involved in a work-related accident are required to immediately undergo drug and alcohol testing and cannot refuse to submit to any post-accident testing requested by certified drug and alcohol technicians, police, or Employee Health Nursing. In short, this requirement would not extend to officials or volunteers.

Bob Keck: Correct. I don't believe there is an answer for this consideration. No testing. In a situation involving an official or volunteer, and it is determined that drugs or alcohol are involved, the result in a 3-year suspension of driving certification. Generally, it is assumed that if an incident occurs, the Law requires immediate reporting. The responding police jurisdiction would (should) be the point for determining if drugs or alcohol are involved and that result would be documented. A 3-year suspension would follow.

Response

There are no recommended changes based on this comment.

Comments 16 & 59. Comment on personal vehicle drivers and being under the influence.

From the analysis, lines 263-267: 330.5-7(a) strictly prohibits Tribal Vehicle Drivers from being under the influence of alcohol, illegal drugs, or prescription or over-the-counter medicine used in an unauthorized or unlawful manner. 330.5-3 authorizes some persons who are not employees, officials or volunteers, to ride in Tribal Vehicles, in some situations. However, are no similar provisions governing Personal Vehicles. This is a policy call.

330.12-2. Drivers operating a Tribal vehicle shall:

…

(c) comply with any alcohol and drug testing requirements under the Tribe's Drug and Alcohol Free Workplace Policy

Shannon Stone: I noticed that the law requires that Tribal Vehicle Drivers are required to comply with the Tribe's DAFWP policy in the event of an accident with a tribal vehicle, but there is no requirement for Personal Vehicle Drivers or passengers to comply with the policy if they have an accident while driving on tribal business. Is there a reason for this when anyone driving for the Tribe should be held in compliance with the policy.

Bob Keck: Law constructed to be silent on this and the recommendation is to leave it silent.

Response

There are no recommended changes based on this comment.

Comments 17 & 18. Comment on whether this should be a law or a policy

Environmental, Health and Safety Division: Law vs Policy. Laws are the standard rules and regulations that everyone under the jurisdiction of the government is required to follow. Laws are minimum standards that protect people, property, and the environment. Laws are enforced through governmental judicial systems. Oneida derives the authority to make laws under the status of a sovereign nation. Policies reflect the mission and objectives of an organization and are prescriptive and operational. Polices set standards above and beyond minimum standards. Policies are enforced through organizational disciplinary procedures and by-laws. Oneida sets policy and workplace rules that apply to employees under the tribe's status as an employer.

- Recommendation – the Vehicle Driver Certification and Fleet Management law should be a policy.

Bob Keck: I'm good either way on law v. policy. Looking big picture, policy might be easier to amend should the need arise in the future

Lisa Summers: Is it a law (applies to all tribal members); or a policy?

Response

This is a policy call for the LOC. This was discussed at the January 21, 2015 LOC meeting and the LOC determined to leave it as a law.

Comment 19. Comment on changing the policy statement.

330.1-2. It is the policy of the Tribe to:

(a) minimize the Tribe's liability when physical damage to vehicles and/or property damage occurs as a result of vehicle accidents; and

(b) improve the efficiency and effectiveness of the use of Tribal vehicles.

Environmental, Health and Safety Division: Add – the first policy statement should be about protecting Oneida employees and the community.

Bob Keck: Good suggestion

Response
This can be incorporated, if the LOC agrees with the recommendation.

Comment 20. Comment on use of "motor vehicle crash" instead of "accident."
Environmental, Health and Safety Division: Every place it says "accident" it should say "motor vehicle crash." MVC's are rarely accidents, and can almost always be prevented. By calling them "accidents"- it implies the driver has no influence or ability to prevent the situation.

Bob Keck: I don't oppose using motor vehicle crash v. accident…..good point made.

Response
This can be incorporated, if the LOC agrees with the recommendation.

Comments 21 & 22. Comment on implementation of the Law.
Shannon Stone: Is there an established timeframe between the date of implementation and the date that the law will become effective?

Tehassi Hill: This is a question in regards to the Vehicle Driver Certification or the vehicle law amendments?

Shannon Stone: The Vehicle Driver Certification?

Rae Skenandore: Wouldn't that be in the Resolution?

Tani Thurner: Well there's something in there about the training requirement, it states in there when it would become effective, the law itself…

Shannon Stone: Well the Safe Driver Training but then we still have to train the workforce on the law, and so we need time in there to develop that. I'm from Human Resources Training Department, and we're to put together the training for the workforce. So we know that there's policy training that has to be done, and that's not addressed within anything that I read so far. Environmental Health is going to do the safety training, they have 180 days after the law comes into effect, I believe, but we need to train the employees on the policy. So we just want to make sure there's time for us to do that between the implementation and the effectiveness.

Bob Keck: Yeah, that period of time between passage and we have to have it in the hands of every employee that would be affected by it, is a piece that we asked our Training Department to assist with it, and so that department is where the question is coming from. It won't be able to be done overnight, and I think to facilitate this what a safe number might be… if that law was passed today, that we be allowed at least sixty and maybe 90 days to be able to accomplish this, because this affects anybody that drives a tribal vehicle, and they need to…. The process of receiving information, and verifying that they've received it, and verification of understanding, is really, really important and we want to do it right, we don't want to rush it. I think I can speak for HR Training on that. So if we were to throw a number out there, 60 at minimum, and 90 preferred. I think that would be ample time, if you agree.

Shannon Stone: Yes. Ninety days, would be great.

Written comment: Shannon Stone: To begin, Training and Development would like to request that there would be a 90 day interval between the date of implementation and the effective date

to allow for development of training and training of all employees on the law. During this time we will be working with the various stakeholders to determine the training needs and delivery methods. After training we will also be getting acknowledgements of receipt of training and understanding of the law from tribal employees.

Response
This can be incorporated in the adopting Resolution, if the LOC agrees with the recommendation.

Comment 23. Comment on application of the Law.

330.3-1(c) "Employee" means an individual who is employed by the Tribe and is subject to the direction and control of the Tribe with respect to the material details of the work performed, or who has the status of an employee under the usual common law rules applicable to determining the employer-employee relationship. "Employee" includes, but is not limited to, an individual employed by any program or enterprise of the Tribe and political appointees, but does not include elected or appointed officials, or individuals employed by a Tribally Chartered Corporation. For purposes of this Law, individuals employed under an employment contract as a limited term employee are employees of the Tribe, not consultants.

Lisa Summers: If it is a law, then it should apply to all

Response
This is a policy call for the LOC. At the very least, the LOC may want to consider amending the definition as was suggested during the Furlough Policy public meeting review, which was as follows:

(c) "Employee" means an individual who is employed by the Tribe and is subject to the direction and control of the Tribe with respect to the material details of the work performed, or who has the status of an employee under the usual common law rules applicable to determining the employer-employee relationship. "Employee" includes, but is not limited to, an individual employed by any program or enterprise of the Tribe and political appointees~~, but does not include elected or appointed officials, or individuals employed by a Tribally Chartered Corporation. For purposes of this Law, individuals employed under an employment contract as a limited term employee are employees of the Tribe, not consultants~~.

Comment 24. Comment on Fleet Management being responsible for Tribal vehicles.

330.4-2. Fleet Management shall: (a) Purchase, manage and monitor the use of Tribal vehicles including the removal of unsafe vehicles from the fleet

Lisa Summers: Looks like we are displacing the manager's role a bit here

Response
This is a policy call as to whether Fleet Management should have this responsibility.

Comment 25. Comment on HRD's responsibilities under the Law.

330.4-5. *Human Resources Department.* The Human Resources Department shall:

(a) Maintain the list of Drivers and provide the list to Fleet Management and the Central Accounting Department on a regular basis;

(b) Perform driving record checks and approve or deny vehicle driver certification based on the review of an individual's driving record;

(c) Notify supervisors of the vehicle driver certification status of his or her employees or volunteers;
(d) Assist supervisors with the administration of vehicle driver certification suspensions;
(e) Request proof of insurance on personal vehicles driven on Tribal business;
(f) Participate in accident investigations;
(g) Approve vehicle driver certifications; and
(h) Maintain documentation of all required driver training and regulatory compliance.

Wendy Alvarez: 330.4-5: (b) same as (g); (f) Participate in accident investigations? – why and how? They are not the experts; (g) same as (b)

Response

The second half of (b) could be deleted as follows: (b) Perform driving record checks ~~and approve or deny vehicle driver certification based on the review of an individual's driving record~~; As to HRD participating in investigations, this is also a responsibility of Risk Management and Fleet Management and is a policy call for the LOC to determine whether HRD should also be included.

Comments 26 & 27. Comment on Driver safety training.

330.4-6 *Environmental Health & Safety Division*. The Environmental Health & Safety Division shall provide Driver safety training as included herein, and provide the Human Resources Department with the names of Drivers who have completed training after each training session.

Environmental, Health and Safety Division: The course that EHSD uses for training should be a training module developed by a professional/public agency. The National Safety Council trains and certifies instructors and sells Defensive Driver Safety Training materials. Web link: https://www.google.com/#q=driving+safety+training+for+employees

Bob Keck: Looks fine

Environmental, Health and Safety Division: Training options should include web base tutorials that are offered and monitored by EHSD.

Bob Keck: Yes, it needs a home. Maybe additional discussion between EH&S and Training/Barb needed? Your call.

Response

330.7-1(c)(1) states:

Drivers of Tribal vehicles who are not governed by federal or state agency regulations for driver safety training shall complete driver safety training, as required by the Environmental Health & Safety Division, every three (3) years.

(A) The training program shall be administered, scheduled, rescheduled and documented by the Environmental Health & Safety Division.

This gives EH&S the ability to institute the type of training they believe necessary for Drivers. There are no limitations within the Law that would prevent EH&S from implementing training as suggested by the comment. No changes are recommended based on this comment.

Comment 28. Comment regarding volunteer process and consent from entities.

(c) An official or volunteer shall provide proof to Fleet Management that he or she has the consent of his or her Tribal entity to use a Tribal vehicle.

Lisa Summers: There is a process to be a tribal volunteer. Why don't we use it here? What constitutes consent from elected or appointed officials?

Response

It is a policy call to determine whether to incorporate volunteer processes in this Law, although it is unclear what the value would be. As to the question governing "consent," see Comments 10 & 55 above.

Comment 29. Comment on providing written proof.

330.5-1

(c) An official or volunteer shall provide proof to Fleet Management that he or she has the consent of his or her Tribal entity to use a Tribal vehicle.

(d) An employee shall provide proof to Fleet Management that he or she has the consent of his or her Supervisor before using a Tribal vehicle.

(e) Upon receiving proof that a Driver has the required consent to use a Tribal vehicle and any other individuals are eligible to travel in a Tribal vehicle, Fleet Management shall determine whether a Tribal vehicle is available.

Wendy Alvarez: 330.5(c), (d) and (e) request "Written" proof

Response

This is a policy call for the LOC to decide whether to require written proof or leave it up to Fleet Management to determine what type of proof is sufficient.

Comment 30. Comment on application of this Law to officials.

330.5-3. The following individuals may travel in a Tribal vehicle:

(a) Employees, officials or volunteers who are on Tribal business.

Lisa Summers: But this doesn't apply to officials.

Response

One of the purposes of the Law is to "establish standards that certify employees, officials and volunteers to drive a Tribal vehicle or drive a personal vehicle on Tribal business." Officials are subject to the Law and there are no changes recommended based on this comment.

Comment 31. Comment on need for an OBC SOP.

330.5-3. The following individuals may travel in a Tribal vehicle:

(b) Individuals who receive permission, through Oneida Business Committee motion, to travel in a Tribal vehicle. The Oneida Business Committee may request input from Fleet Management before making a determination on these requests.

Lisa Summers: BC SOP is needed here.

Response

The LOC may want to consider forwarding this recommendation to the OBC for consideration.

Comment 32. Comment on BC Vehicle Policy.

330.5-4(a) Personal use or non-business miles, except as authorized under the Business Committee Vehicle Policy, as approved on August 17, 1990 and amended by the Oneida Business Committee.

Lisa Summers: Why isn't this being updated too?

Response

This is a policy call for the LOC if they want to take up this "policy" which seems to be more of an SOP for the use of what is now commonly referred to as the Chairperson's vehicle.

Comment 33. Comment on side effects of prescription on over-the-counter drugs.

330.5-7(a) A Driver of a Tribal vehicle shall not be under the influence of alcohol; illegal drugs; or prescription or over-the-counter medicine used in an unauthorized or unlawful manner.

Lisa Summers: Even when lawful has side effects.

Response

If the LOC wants to elaborate on this section as recommended by the comment, it can be expanded; however, it may be difficult to enforce.

Comment 34. Comment on entity responsible for equipping vehicles with GPS.

330.5-11. The Tribe may equip Tribal vehicles with Global Positioning Systems (GPS) to monitor vehicle usage.

Environmental, Health and Safety Division: 330.5-11 "The Tribe may equip tribal vehicles with GPS" On page 6, line 210-it says "Fleet Management is responsible for installation/removal" referring to GTP technology. The two should probably both say "Fleet Management"

Bob Keck: Yes, to be consistent.

Response

The change can be incorporated as recommended.

Comment 35. Comment on travel policy application.

330.6-1. Rental vehicles are considered Tribal vehicles for the purpose of this Law. All provisions of this Law apply to rental vehicle usage. Cars shall be rented in accordance with the Tribe's Travel and Expense Policy and Drivers of rental vehicles shall be vehicle driver certified according to the terms and conditions of this Law.

Lisa Summers: Double check with travel policy and what about officials?

Response

Section 8-3 of the Tribe's Travel and Expense policy require driver's to be on the approved Tribal vehicle drivers list with HRD. Parts of the Travel and Expense policy seems to apply to employees only, while other sections specifically refer to the Business Committee and Boards, Committees and Commissions. The LOC may want to consider this comment if the Travel and Expense policy is amended in the future. There are no recommended changes based on this comment.

Comment 36. Comment on purchasing collision damage waivers from rental companies.

330.6-2. Every vehicle rental shall include the purchase of the maximum collision damage waiver offered by rental companies.

Lisa Summers: Why?

Response

A financial analysis conducted on this provision explains the usefulness of this section:

> The policy requires the purchase of the maximum collision damage waiver on all rental vehicles. Generally, the cost runs approximately $25 per day. According to Purchasing, the Tribe utilizes rental vehicles 30 days a year on average. The cost would therefore be approximately $750 annually. Oneida's physical damage (PD) deductible per accident is $5000. Reviewing Oneida's historical claims, a car accident has an average cost of $3,089. This amount would be paid out of pocket as it is under the deductible. Without the additional insurance from the rental agency, one accident would result in up to $5,000 payable as the deductible. By taking the agency insurance, Oneida would realize a cost savings of $4,250 if there is just one accident in a year. The practice pays for itself if there is one accident with a rental car in the next 6 years.

There are no changes recommended based on this comment.

Comment 37. Comment on eligibility based on having a driver license.

330.7-1(a) Hold a valid, non-probationary Wisconsin driver license and provide proof of such license, including any commercial endorsement(s), to the Human Resources Department.

Shannon Stone: The next concern was gaining an understanding of what would determine in a person's driving record that they would not be eligible or lose eligibility to maintain vehicle drive certification. Discussion with Bob Keck determined that as long as the state said the driver was eligible to drive, the driver would be able to drive for the Tribe. If the state said the driver is not eligible to drive then they would not be eligible to drive for the Tribe. This brought out the question how would a driver be impacted if they received an Occupational driver's license? Bob Keck suggested that they would have their vehicle driver certification suspended for the period identified within the law based upon whether it was the first, second, third, four or more suspensions. Then the individual could have their vehicle driver certification reinstated under the provision given within the law.

Response

There are no recommended changes based on this comment.

Comment 38. Comment on restricting drivers with CDL's to the state of Wisconsin.

330.7-1(a)(1) Drivers with commercial driver licenses may be restricted to only operating Tribal vehicles within the state of Wisconsin.

Lisa Summers: Why?

Response

This restriction was added because other states may have additional requirements that drivers with commercial driver licenses under the Tribe's law do not meet. There are no recommended changes based on the comment.

Comment 39. Comment on length of time a person has to obtain a WI driver license.

330.7-1(a)(3) Individuals with a driver license from a state other than Wisconsin shall obtain a Wisconsin driver license within thirty (30) days after their first day of actual employment or service and provide a copy to the Human Resources Department.

Lisa Summers: Should be 60 days.

Response

Under Wisconsin Law, a driver with a commercial driver license is required to apply for a Wisconsin driver license within thirty days of becoming a resident of the state; other drivers have sixty days. This is a policy call for the LOC as to whether they wish to make any changes based on this comment.

Comment 40. Comment on what citations/convictions makes a Driver ineligible under the Law.

330.7-1(b) Pass a driving record check to verify the Driver has not received a citation or been convicted of a violation which would make the Driver ineligible under this Law.

Lisa Summers: Cite section.

Response

If the LOC makes the changes recommended based on comments 2, 3 & 68, no further changes should be necessary based on this comment.

Comment 41.

Complete all driver training requirements imposed by the Tribe or an individual Tribal entity or by any federal or state agency regulations.

Lisa Summers: Approved regs for all; Any entity under (c) is included, but under (c)(1)(A), EH&S is in charge of the Training Program.

Response

The Law allows Tribal entities, other than the Environmental, Health & Safety Division to implement driving certification procedures that are stricter than those implemented by EH&S, as long as they do not conflict with EH&S's standards and they are approved by Fleet Management and HRD. In addition, if federal or state agency training requirements apply to a Driver, it has been determined that these training requirements sufficiently meet the intent of the training requirements contained within this Law. No changes are recommended based on this comment.

Comment 42. Comment on creating a new section.

330.7-1(c)(1)(C) A break in employment or service of one hundred eighty (180) days or greater requires retraining. Drivers shall be paid their regular wage by their home department for all required training.

Lisa Summers: This [the last sentence] should be made a new section (D).

Response

This change can be made and would not have a significant impact on the Law.

Comments 43, 54 & 58. Comments on the term "immediately."

330.8-1. Drivers shall notify the Human Resources Department, in writing, immediately upon:

(a) Issuance of a driving citation involving drugs or alcohol.

(b) Any suspension of driving privileges by any State or regulatory agency.

(c) Reinstatement of driving privileges by any State or regulatory agency, if applicable.

330.10-2(b)(1) A Driver shall immediately notify the Human Resources Department of any cancelation or lapse in his or her insurance coverage.

Lisa Summers: What is immediately?

330.12-2. Drivers operating a Tribal vehicle shall:

(a) report all accidents or damage involving the vehicle immediately to his or her Supervisor, Fleet Management and Risk Management.

Lisa Summers: Within 24 hours.

Response

This is a policy call if the LOC wants to remove the use of the term "immediately" from the Law and replace it with more definite time frames, such as "within 24 hours."

Comment 44. Comment on next steps after notification to Fleet Management regarding vehicle problems.

330.8-2(b) Notify Fleet Management immediately of any problem(s) with a Tribal vehicle that may be a safety or mechanical hazard, or of any incidents that result in the inability of a Tribal vehicle to complete a trip.

Lisa Summers: Then what?

Response

This is a policy call as to whether to include next steps in the Law as to how Fleet Management should respond to these notifications. The intent was that Fleet Management would make determinations based on the location of the vehicle and the incident regarding: whether to tow the vehicle and who would tow it; whether to fix the vehicle and who would fix it; how to get another vehicle to a stranded driver or if a vehicle should be rented by the driver, etc.

Comment 45. Comment on using communication devices in a Tribal vehicle.

330.8-2. When a Driver uses a Tribal vehicle, he or she shall

…

(d) Safely stop the vehicle when using devices such as cell phones, whether for talking or texting; notebook or laptop computers; books or book applications; newspapers or magazines; and two-way radios. This does not include authorized emergency vehicle communication equipment or on-board computers used for communication or navigation.

Shannon Stone: There is a lot of new technology in new vehicles including blue tooth enabled and hands free communication equipment it sounds like as long as it is on-board equipment that it is acceptable to use. For instance, my car will automatically sync up with my cell phone to the on-board computer in the car. If the phone rings, the driver may answer the call through voice activation using the car's system. However, the phone by its design has hands free operation that is essentially identical to the capability of the vehicle. Can drivers use hands free devices while driving?

Reponse

The LOC should clarify whether hands free devices are acceptable to use while driving a Tribal vehicle as requested by the comment.

Comment 46. Comment on time frame for notifying Supervisor/HRD of citation involving drugs or alcohol.

330.9-1. A Driver shall have his or her Tribal vehicle driver certification suspended and shall be prohibited from driving a Tribal vehicle upon any of the following:

> …
>
> (b) Failing to advise his or her Supervisor, or the Human Resources Department if the Driver does not have a Supervisor, of a driver license suspension or of receiving a motor vehicle operation citation involving drugs or alcohol.

Wendy Alvarez: 330.9-1(b) within established timeframe – 5 days etc…

Response

Section 330.8-1 requires a driver to immediately notify HRD of receiving a driving citation involving drugs or alcohol or a suspension of driving privileges. It is a policy call for the LOC whether to change this time frame. In addition, either 330.8-1, 330.9-1, or both should be updated to reflect the same notification requirements.

Comment 47. Comment on disciplines and other violations of the Law.

330.9-1. A Driver shall have his or her Tribal vehicle driver certification suspended and shall be prohibited from driving a Tribal vehicle upon any of the following:

> (f) Knowingly driving a Tribal vehicle without being certified under the provisions of this Law.

Shannon Stone: Under suspension of Tribal vehicle driver certification, the law states that the driver may lose their Tribal vehicle driver certification for driving a Tribal vehicle without certification. This should probably say that drivers may be disciplined for driving a Tribal vehicle without certification. Additionally, the individual should lose their personal vehicle certification as well for the specified time in the law. There should also be a remark under suspension of personal vehicle driver certification that driving a Tribal vehicle without Tribal vehicle certification is prohibited.

Response

330.13-7 states: "Drivers who violate this Law may be subject to disciplinary action, in accordance with Tribal policies and procedures, whether or not the violation results in the suspension of their vehicle driver certification."

In addition, 330.11-1 states: "A Driver shall have his or her personal vehicle driver certification suspended and shall be prohibited from driving a personal vehicle on Tribal business upon any of the following: (f) Violating any other provision of this law." This would include violating 330.10-1, which states: "Drivers of personal vehicles on Tribal business shall be vehicle driver certified by the Human Resources Department to operate a personal vehicle on Tribal business."

There are no changes recommended based on the comment.

Comment 48. Comment on a waiting period before suspending vehicle driver certification.

330.9-1. A Driver shall have his or her Tribal vehicle driver certification suspended and shall be prohibited from driving a Tribal vehicle upon any of the following:

Lisa Summers: Is there a waiting period. How does one get instated?

Response

There is no waiting period included in the Law; the suspensions would be carried out immediately upon any of the violations occurring.

Comment 51.

330.10-2. *Insurance*. Drivers shall provide proof of the minimum insurance required by this Law to the Human Resources Department.

Lisa Summers: Distinguish between non-work related activities.

Response

The comment seems to be requesting that a Driver could have different minimum insurance requirements for activities that are conducted while on personal business. There are no recommended changes to the Law based on this comment as this does not seem like a reasonable request of employees; however, the LOC may want to obtain more clarification from the commenter as to the request being made in the comment.

Comment 52. Minimum insurance requirements.

330.10-2. *Insurance*. Drivers shall provide proof of the minimum insurance required by this Law to the Human Resources Department.[1]

(a) The minimum insurance requirements on a personal vehicle are:

(1) $100,000 Per Person;

(2) $300,000 Per Accident for Bodily Injury; and

(3) $25,000 Property Damage.

Lisa Summers: Why?

Response

These limits have been determined by Risk Management to be prudent minimum requirements.

Comment 53. Comment on notifying supervisors of proof of vehicle insurance.

330.10-2(b) Drivers are responsible for maintaining updated proof of vehicle insurance and providing copies to the Human Resources Department.

Wendy Alvarez: 330.10-2(b) Add supervisor to notification.

Response

This is a policy call for the LOC to determine whether it is necessary to notify one's supervisor every time proof of insurance is updated. Some individuals update this information on a monthly basis and although HRD is the entity responsible for maintaining the vehicle driver list, it may be more practical to give notice to supervisors who are responsible for directing employees to drive on Tribal business.

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1 **Lisa Summers:** Distinguish between non-work related activities.

Comment 56. Comment on applying the Law to those who don't submit mileage reimbursement.

330.10-3(c) All provisions of this Law apply to Drivers of personal vehicles on Tribal business regardless of whether or not vehicle mileage reimbursement is submitted.

Lisa Summers: How?

Response

Reimbursement of vehicle mileage is a separate process from this Law and in the past some drivers were under the impression that they could drive a personal vehicle on Tribal business even if they were not on the driver list, as long as they did not collect mileage. This Law is intended to apply to all Drivers and the collection of vehicle mileage (or non-collection) is irrelevant.

Comment 61 & 62. Comment on Fleet Management and Risk Management investigating accidents.

330.12-4. All accidents involving Tribal vehicles shall be internally investigated by the Tribe. These investigations shall be coordinated and completed as necessary by Fleet Management and Risk Management, and other personnel as deemed appropriate by Fleet Management and Risk Management.

Environmental, Health and Safety Division: Are the Fleet Manager and/or Risk Management qualified to investigate a crash? Is there training or certification on those skills?

Bob Keck: Yes. If resources are needed, we'll go get them. The intent here is to have a process that can determine fault if it is not done so by law enforcement (i.e. – no citation issued, which happens) or anyone else. A property damage only "MVC" often doesn't result in assignment of fault (i.e. – often no law enforcement involved), so the facts of the incident need to be reviewed….by someone. Rick and I feel we can reasonably and objectively do that. Again, if review and/or investigation beyond us is warranted, we'll do that.

Lisa Summers: How is the staff trained to do this part?

Response

Risk Management has answered these questions and no changes are recommended based on these comments.

Comment 63. Comment on applying law to individuals without supervisors.

330.12-4(b) Investigation reports shall be provided to the Driver and the Driver's Supervisor, or the Human Resources Department if the Driver does not have a Supervisor, with copies retained in Fleet Management and Risk Management for a minimum of three (3) years.

Lisa Summers: If there is no supervisor, it doesn't apply. Should it be a maximum of 3 years and need department SOPs.

Response

If this section does not apply, it is unclear who would keep these records. Requiring HRD to keep them in the absence of a supervisor would ensure similar records are kept by one entity and available in the future if needed. It is a policy call for the LOC as to whether there should be a maximum time limit, as opposed to the suggested minimum time limit and if the Law should state that individual departments need SOPs.

Comment 64. Comment on suspending supervisor vehicle driver certification.

330.12-5 reads in part: "If a Supervisor is aware of an accident and reporting requirements are not followed, the Supervisor is also subject to a vehicle driver certification suspension."

Wendy Alvarez: 330.12-5 Supervisor certification suspended doesn't make sense. I would suggest holding the supervisor accountable for not following tribal policy through the Disciplinary Process. You don't want to the stop the supervisor from doing their job if they need to drive. Then you will have two drivers unavailable. If the supervisor has multiple drivers (Shuttle) that could create a Customer Service concern.

Response

This is a policy call for the LOC to determine whether the consequences for inaction on a supervisor's part should be included in the Law, or left up to the individual's supervisor. The Law, as written, is requiring a violation of the Law result in a suspension of driving privileges.

Comment 65. Comment on reporting to HRD in absence of a Supervisor.

330.12-6. Drivers driving a personal vehicle while on Tribal business shall report all accidents to local law enforcement at the time of the accident, and to their Supervisor, or the Human Resources Department if the Driver does not have a Supervisor, and Risk Management within twenty-four (24) hours after the accident or damage.

Lisa Summers: Why report to HRD if no Supervisor?

Response

HRD is responsible for maintaining the vehicle driver list and, in lieu of a supervisor, it seems that HRD would not know about actions that could potentially affect a driver's certification status.

Comment 66. Comment on suspending vehicle driver certification for being at fault in an accident.

330.12-7. If, while driving a Tribal vehicle, a Driver is determined to be, or admitted to be, more than fifty percent (50%) at fault in an accident involving vehicle damage, property damage or personal injury, the Driver shall have his or her vehicle driver certification suspended.

Lisa Summers: Why and for how long?

Response

This seems to be prudent to have automatic consequences for a driver who is more than fifty percent at fault in an accident. The length of the suspension would depend on what suspension (1st, 2nd, 3rd, etc.) this is for that driver. The Law sets out the time lines in section 330.13.

Comment 67. Comment on frequent insurance lapses

330.13. Vehicle Driver Certification Suspensions, Permanent Loss of Vehicle Driver Certification and Disciplinary Action

Wendy Alvarez: 330.13 There are employees who lapse for one day or more each month due to monthly renewals on their policy. Who will keep track of these suspensions? Over what amount of time does this cover – (entire employment if no break, 20 years, 10 years etc).

Response
The LOC may want to consider adding a provision to 330.10-2(b) that sets a minimum time frame for acceptable/unacceptable lapses in insurance. For example:

(b) Drivers are responsible for maintaining updated proof of vehicle insurance and providing copies to the Human Resources Department.

(1) A Driver shall immediately notify the Human Resources Department of any cancelation or lapse of five (5) days or more in his or her insurance coverage.

Comment 69. Screening out ineligible drivers who apply for jobs.

330.13-4. Drivers who incur more than three (3) vehicle driver certification suspensions under this Law shall lose their vehicle driver certification for three (3) years, beginning with the date of the incident that resulted in the most recent suspension.

Wendy Alvarez: 330.13 If the employee lost their eligibility to drive for 3 years, do we screen them out of the hiring process as well for any position requiring vehicle clearance for three years.

Response
An employee who loses their eligibility to drive for three years loses that eligibility based on multiple vehicle driver certification suspensions under the Law or a driving conviction or citation involving drugs or alcohol. If an individual leaves the Tribe for one hundred eighty or more days, it would clear their driver record. The LOC may want to clarify this section to indicate that whether the hundred eighty days begins upon the break in employment/service or upon the expiration of the suspension. This may prevent confusion in the case of an employee who leaves the Tribe in the beginning of a suspension and applies for a position with the Tribe after the one hundred eight days expires, but before the three year suspension is completed.

Comment 70. Comment on 3 year suspension for driving citations involving drugs or alcohol.

Due to the seriousness of a citation for the operation of motor vehicles involving drugs or alcohol, this Law requires suspension of vehicle driver certification upon the issuance of a driving citation involving drugs or alcohol and will only allow reinstatement of vehicle driver certification upon the dismissal of the citation or upon three (3) years passing from the date of conviction.

Lisa Summers: Where is the 3 years coming from? It could be a year before a person is convicted.

Response
This time lime was incorporated based on recommendations from Risk Management.

Comment 71. Comment on reinstating vehicle driver certification.

330.14-2. An individual whose vehicle driver certification is suspended for thirty-one (31) days or more may have his or her vehicle driver certification reinstated after the following.

(a) The individual requests re-instatement of his or her vehicle driver certification after:

(1) A vehicle driver certification suspension has concluded or any citation(s) are dismissed or the individual is cleared of any charges alleged in a citation that resulted in a driving certification suspension; and

(2) Three (3) years have passed since the individual was convicted of a motor vehicle operation citation involving drugs or alcohol; and

(3) The state removes a driver license suspension; and

(4) Written proof has been submitted to the Human Resources Department that the individual has any required insurance coverage; and

Lisa Summers: What if they don't all apply? Under (a)(2) could take years to get a conviction.

Response

If a section does not apply, then that section should be determined to have been met. A conviction could take years to obtain, it is a policy call for the LOC to determine whether alternate time frames should be used.

Comment 72. Comment on rechecking driver's vehicle certification.

Wendy Alvarez: Will all current driver's be rechecked? If so, within what timeframe? Gaming Personnel Services would require at least one month of the implementation of the law to re-check all Driver's in the Gaming Division.

Response

It does not appear that all drivers will need to be rechecked; however, it may be beneficial to state in the Law and/or adopting Resolution that these new requirements apply going forward and convictions/citations and other actions that occur before this Law goes into effect will be treated in accordance with the previous policy. In addition, the LOC may want to consider whether past violations will/will not count as a suspension under the new Law.

Conclusion

There were multiple comments provided on the Law, both at the public meeting and in writing which the LOC should consider and incorporate as appropriate. After the LOC reviews the comments and provides direction as to any changes necessary based on the comments, the draft and analysis should be updated and may be prepared for OBC consideration.