



# Substance Abuse Policy

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## Overview

Company (the "Company" or the "Employer") is committed to maintaining a safe, productive work environment at all Company facilities and work sites, and to safeguarding Company property. We recognize that our employees are our most valuable resource and in an effort to maintain their health, safety and welfare, the following statement of policy is established. The use of a controlled substance can undermine employee performance and morale. For these reasons the Company has implemented the following Substance Abuse Policy.

Additionally, the Company is required to enforce compliance with Department of Transportation (DOT) and Federal Motor Carrier Safety Administration (FMCSA) Regulations regarding both controlled substances and alcohol, the Drug-Free Workplace Act of 1988 as amended, various other applicable Federal and State laws, and the Company's customers' drug and alcohol free workplace requirements. If at any time these regulations, laws, or requirements change, such changes shall become a part of this Policy without amendment and shall become effective as required, except to the extent that such change or amendment is a mandatory subject of bargaining under any applicable Bargaining Agreement.

This Policy applies to all employees of the Company on the job as well as to situations where an employee's off-the-job conduct might impair work performance, employee safety, safety of the public, Company or customer equipment, or harms the reputation of the Company or its customers. The Company has no intention of intruding into the private lives of its employees. The Company does, however, recognize that involvement with illegal controlled substances or alcohol off the job eventually takes its toll on job performance and job safety. The concern and purpose of this Policy is to identify those people suffering from substance abuse, and to assure that employees report to work in condition to perform their duties safely and efficiently in the interest of their fellow workers, their families, customers, and the general public, as well as themselves. This policy prohibits illegal drug use on and off the job.

The Company will not tolerate or condone substance abuse. It is the policy of the Company that employees who engage in the sale, use, possession, or transfer of illegal drugs or controlled substances, or who offer to buy or sell such substances, or who possess, use, or are under the influence of alcohol during working hours, or have illegal drugs in their system, or who are safety-sensitive employees and have impairing effect prescribed or over-the-counter drugs in their system during working hours, will be subject to disciplinary action up to and including termination for violation of this safety policy. This policy prohibits illegal drug use on and off the job.

Notice of the Company's Drug-Free Workplace testing will be provided on announcements of job openings and is posted in conspicuous locations on Company premises. Our program can help improve your health and help you avoid trouble with the law. Even if you do not use drugs or alcohol, this program will make your workplace safer and more productive, the Company safer, and will help your friends and co-workers get the help they need. Compliance with this policy is a condition of your hire and continued

employment. The Company has developed its drug-free workplace policy in substantial compliance with the applicable Drug-Free Workplace Acts in the states where employees report to work. This may expand or restrict certain testing options or consequences set forth in this policy. Applicant testing will begin immediately under this updated Policy and sixty (60) days after the effective date of February 1, 2017, all current employees are subject to testing as outlined below, except for reasonable suspicion and post-accident testing which shall be implemented immediately. The existing drug and alcohol-testing program will remain in place until the effective date of this program.

Any illegal substances will be turned over to the appropriate law enforcement agency and may result in criminal prosecution.

Off-the-job illegal drug use, which could adversely affect an employee's job performance and safety, the safety of a fellow employee, the public, or Company or customer equipment is subject to disciplinary action up to and including termination of employment.

Employees who are arrested for off-the-job drug abuse activity will be considered to have provided the Company actual notice of potential substance abuse in violation of this Policy. In determining the appropriate disciplinary action, consideration will be given to the nature of the charges, the employee's work record, and whatever other factors may be relevant to the impact of the employee's arrest upon the conduct of Company business.

The Company expects and requires all employees to report to work at all times free of any controlled substance and alcohol and free from effects thereof; to participate in and support Company sponsored controlled substance and alcohol education programs; to seek and accept assistance for substance abuse and alcohol related problems before job performance is affected; and to support Company efforts to eliminate controlled substance and alcohol abuse among employees where it is found to exist.

## **Drug Testing Program**

In accordance with and subject to the requirements of this Policy, those contained in DOT Regulations, those stipulated by customers and State or Federal law, the Company has established a testing program for illegal drugs and controlled substances for all employees. Testing shall include pre-employment, reasonable cause, post-accident, random selection, return-to-work, and follow-up. Positive results on, or failure to consent to, a drug test will result in suspension or discharge. Alcohol testing under DOT or State Regulations will be administered only to holders of commercial driver's licenses subject to State or Federal law. All employees, however, are subject to Company Policy prohibiting the possession, use or consumption of alcohol as set forth in Company Policy Manuals.

Drug and alcohol testing is done through chemical analysis which determines without question if a person has drugs or alcohol in his or her system. Subject to any applicable state law restrictions, specimens subject to testing include urine, breath, or any product of the human body capable of revealing the presence of alcohol or drugs. Specimen collections, chain of custody and drug and alcohol tests will be in substantial compliance with the U.S. Department of Transportation (DOT) procedures. FDA approved Rapid Screen drug and alcohol devices may be used, as allowed by applicable State Laws, with laboratory confirmation testing, or other validation, for any non-negative result before adverse consequences are taken. To ensure accuracy, lab test procedures, using a laboratory licensed or approved by the applicable Department of Health or certified by Certified Addiction Professional (CAP) or Health & Human Services (HHS), shall include a preliminary drug screening, two highly sophisticated scientific tests including adulterant detection, and a review of non-negative results by an independent Medical Review Officer. All positive initial tests are confirmed by Gas Chromatography Mass Spectrometry (GC/MS) at cut off levels established by the DOT under Substance Abuse and Mental

Health Services Administration (SAMHSA), or accepted industry standard for those drugs for which DOT cut off levels have not been established.

Testing positive on a drug or alcohol test is a serious violation of the Company's Policy and may disqualify the employee from receiving any benefits. Any employee who tests positive, or refuses to be tested, will be subject to appropriate disciplinary action, up to and including immediate termination, as well as possible disqualification from receiving unemployment compensation benefits and/or may forfeit eligibility for worker's compensation, medical and indemnity benefits if the positive test is post-accident; the laws of the State where you report to work may modify these consequences.

Refusal to provide a specimen following an on the job accident may also subject you to workers' compensation disqualification.

Any employee who has a controlled substance or alcohol problem is encouraged to get professional help before the Company identifies the problem. The Company utilizes a third party vendor through through MedWork to provide nationwide substance abuse services. MedWork can be contacted at 800-628-9343. Additionally those with health coverage through their local union can contact their health insurance provider.

If a customer requires the Company to have a stricter substance abuse policy than provided here, then those portions of the customer's policy will govern including requirements for alcohol testing. If the customer's requirements are less strict, this Policy shall govern.

The Policy covers all applicants, employees, and management working for the Company, its subsidiaries and affiliates, unless covered by a separate policy. Various Regions of the Company may adopt variations of this Policy, so long as such variations are not less restrictive and satisfy DOT and FMCSA Regulations.

To the extent that a particular State restricts the rights of an employer to implement an employee drug testing program, employees of the Company's operations within that State shall be subject to a modified version of this Policy that complies with State law.

## **Self-Identification**

Although this Substance Abuse Policy covers situations in which the Employer may test employees, one purpose of this Policy is to identify and refer to rehabilitative services those people with chemical dependencies. To that end, the Company encourages persons who feel they may have a problem with drug or alcohol dependency not to wait until they are identified through a test. Once a person is selected or subject for a drug test under the terms of this Policy, said person is not eligible for the self-identification provisions of this Policy. Employees who voluntarily seek help through an Employer approved rehabilitative program will not be penalized by the Employer for the first incident of self-identification. The services provided will be paid for by the employee's medical coverage, if provided, to the extent applicable. The Employer agrees that should an employee be required to be out of work because of voluntary participation in a rehabilitative program, the Employer will allow that person time off for that purpose and will provide employment to the employee upon satisfactory proof of successful completion of that program. Any time missed by a self-identifying employee due to participation in a rehabilitation program will not be used against the employee for disciplinary reason, provided that upon release from the program and return to work, the employee shall be subject to the provisions of Section 4(3)(g) of this Policy, as well as all other provisions hereof. An employee shall not be permitted to take advantage of the self-identification option more than once. This Policy does not supersede the Company's prohibition against the possession, use or consumption of alcohol as set forth in Company Policy Manuals.

## **Service Agent**

The Corporate Office address of the Laboratory currently responsible for analyzing all specimens is as follows:

### **Alere Toxicology**

1111 Newton St.  
Gretna, LA 70053  
504-361-8989

In the event that this company does not have a laboratory patient service center to service certain areas of the Region, eScreen, Inc., who provides Company's Medical Review Officer services, will provide an alternate collection facility. The Company reserves the right to change any laboratory, Medical Review Officer, collection facility or other service provider at any time.

A Medical Review Officer (MRO) will review all drug results before they are reported to the Designated Employer Representatives. The MRO will receive all test results from Alere Toxicology. The MRO will interpret the results and notify the employee of any positive results. The MRO will then provide the employee the opportunity to discuss the results, verify the results and review any medical history, including any appropriate medical records provided by the person tested. This review and interpretation are to determine if there is an alternate medical explanation for the confirmed positive test result. The MRO will then verify that the laboratory report and assessment are correct, and notify the Designated Employer Representative of the pass/fail results.

Based on a review of laboratory inspection reports, quality assurance and quality control data, and other drug test results, the MRO may conclude that a particular specimen is invalid for testing. Upon reaching such a conclusion, the MRO will cancel the test and determine whether there is a medical explanation for the specimen's invalidity. If no explanation is found, the MRO will order that the individual be tested again using direct observation collection procedures.

If an employee's test is verified as positive, the MRO will accept the employee's request for a retest at the original laboratory or at a second certified laboratory for a period of sixty (60) days following the employee's receipt of the verified test results from the MRO, or as otherwise allowed by the laws or regulations of the State where the employee reports for duty. An employee who is tested pursuant to DOT or FMCSA Regulations and whose test is verified as positive, adulterated or substituted is entitled to have the split specimen tested if the request for such testing is received by the MRO within seventy-two (72) hours of the employee's receipt of the verified test results.

The MRO will approve all retest results to be sent to Substance Abuse and Mental Health Service Administration (SAMHSA) certified laboratories at the employee's expense (employee will be reimbursed if the retest is negative) and notify the laboratory in writing to maintain verified positive urine in secured frozen storage for more than 365 days, if required for a court case or for some other reason. The MRO shall also conduct additional examinations, interviews and/or counseling, as necessary, to ascertain whether a situation constitutes covered personnel's failure to be fit for duty. The MRO shall participate in and provide all information necessary to the individual(s) reviewing and resolving appeals by employees. Because it is possible that some analytes may deteriorate during storage the results of a retest are to be reported as confirmation of the original test results if the detected level of the drug are: a) below the DOT established limit; and b) equal to or greater than the sensitivity of the test.

The current company responsible for providing the Medical Review Officer services is:

**eScreen, Inc.**

7500 W. 110<sup>th</sup> St. Ste. 500  
Overland Park, KS 66210  
Phone: 800-881-0722  
(Physical)

**eScreen, Inc.**

PO Box 25902  
Overland Park, KS 66225  
(Mailing)

**MRO - Dr. Stephen Kracht**

PO Box 25903  
Overland Park, KS 66225  
Phone: 888-382-2281

The current company DER (designated employer representative) is:

**Vicki Hoffman (DER) or Jo Ann Swank at 937-294-1313 (Alternative DER)**

## **SECTION 1: ON-THE-JOB USE, POSSESSION, SALE OR DISTRIBUTION**

The use, possession, sale or distribution of controlled substances or alcohol on Company premises or on any Company work site is prohibited.

Any employee found in violation of the above stated Policy is subject to discharge.

The term "work site" includes:

- Company vehicles, and private vehicles on Company premises.
- Parking lots and recreation areas where Company vehicles are used, maintained or parked.
- For employees traveling on Company business, any room or lodging accommodation.

Depending on the circumstances, other action, including notification of appropriate law enforcement agencies, may be taken with respect to an employee violating this Policy.

## **SECTION 2: APPLICANT DRUG TESTING**

The presence of illicit or prohibited drugs or illegal drugs in their system at time of their pre-employment test is cause for rejection.

Applicants, upon request, will be given a list of drugs for which they are tested.

All applicants for employment shall undergo a pre-employment drug screening (by point-of-collection field test or laboratory test, at the option of the Company) after having been advised of the necessity for screening as a prerequisite for employment. In the event an applicant commences work prior to testing, a subsequent positive drug test shall result in immediate termination of the applicant's conditional, probationary employment. Such testing shall be done within twenty-one (21) days of commencing work. Until such test is completed, the employee shall remain in the status of an "applicant" for purposes of the administration of this Policy.

An applicant for a position defined as "safety-sensitive" in this policy under the Controlled Substance & Alcohol DOT/CDL supplement of this policy, must participate in the drug and alcohol testing program prescribed by Federal Motor Carrier Safety Administration rules as a condition of employment and have a negative pre-employment test before performing a safety sensitive function.

In the event an applicant (including an employee tested during the probationary period) tests positive, he or she may request a GC/MS confirmatory test be done at his or her own expense. In the event the positive result is confirmed by the MRO, or in the event a confirmation of the positive result is not requested by the applicant, the applicant shall be ineligible for employment until demonstrating completion of a rehabilitation program acceptable to the Company prior to being eligible to reapply. In the event the applicant is reemployed, he or she shall be placed in a follow up testing program for a minimum of twelve (12) months and will be subject to at least six (6) follow-up tests. A second positive test with the Company, or any of its subsidiaries, may render the employee ineligible for rehire.

### **SECTION 3: EMPLOYEE IMPAIRMENT AND DRUG USE**

Employees are prohibited from being at work while under the influence of or impaired by alcohol, drugs or controlled substances. For the purposes of this Policy, the term “under the influence” is defined as having alcohol or drugs in one’s system during working hours as detected by an alcohol or drug test. Any employee violating this prohibition will be subject to disciplinary action including discharge.

Any employee working in a safety-sensitive position as defined by Company Policy is required, as a safety rule, to pre-duty disclosure that they are taking or using ANY impairing effect prescription, over-the-counter medications, mind altering synthetic or designer drugs or other substance which may have an effect on performance of safety-sensitive duties. This includes medical and recreational Marijuana, the use of which the Company for safety reasons does not accommodate.

If the fact that the employee is taking or using an impairing effect medication or substance is not disclosed pre-duty by a safety-sensitive employee and the employee tests positive, is otherwise determined to be taking or using such, or is determined by the MRO to be a potential safety risk due to taking or using an impairing effect medication or substance, that employee will be subject to discipline, up to and including termination, for violation of this safety rule. If disclosure is made, the Company reserves the right to send the employee for a Fitness-for-Duty evaluation to evaluate the medication or substance and its effects on the performance of safety-sensitive duties. In advance of testing, employees are encouraged to have their own doctor make an individualized assessment of any safety related risks of the medications or substances which they are taking or using, providing the doctor a copy of their job description and having the doctor to render an opinion on the safety related risks. The employee need not disclose to their supervisor or manager the medication or medical condition involved to fulfill the disclosure obligation of this Policy. All information provided will be kept separate from personnel files and in a confidential manner. The MRO, or consulting MRO, will make the final determination on the safety related risks of any particular medication or substance. **Note:** *Safety-sensitive employees in [non-DOT positions] are those employees who discharge duties so fraught with risks of injury to self or others, environmental injury and/or property damage that even a momentary lapse of attention can have disastrous consequences. It is an essential job function safety rule applicable to every employee working in a safety sensitive classified position to be able to work in a constant state of alertness and in a safe manner.*

The procedures to follow if a co-worker is observed using, possessing, or is under the influence of drugs on the job, or observed as being under the influence, possessing or consuming alcohol while on the job are:

1. Report the incident as soon as possible to the General Foreperson/Supervisor, or Region Manager, or Executive Director, Administration in the Dayton Office (1-800-522-4311).
2. When reporting the incident, have available the co-worker's name and observed behavior, the date, the time, and other relevant information. An investigation into the incident will immediately proceed.

3. Failure to communicate the incident in a timely manner, or "turning your head," or protecting a violator may be cause for disciplinary action up to and including termination to the extent provided in the Company's disciplinary programs or contained in any bargaining agreement. Maliciously, jokingly or knowingly falsifying a report will be cause for disciplinary action up to and including termination.
4. Your report will be taken confidentially. You may be asked to furnish a statement of your account of the incident for verification.
5. The FMCSR in 49 CFR Part 392 also contains prohibitions regarding the use of alcohol and drugs. 49 CFR 392.4 prohibits the use or possession of drugs while on duty. 49 CFR 392.5 prohibits the use of alcohol prior to and while on duty. It also prohibits the possession of un-manifested alcoholic beverages.

The regulations in 49 CFR Part 392 apply to drivers of commercial motor vehicle as defined in 49 CFR 390.5 of the FMCSR. This definition includes drivers of a:

1. Vehicle with a gross vehicle weight rating or gross combination weight rating of 10,001 or more pounds;
2. Vehicle designed to transport more than 15 passengers including the driver;
3. Vehicle used in the transportation of hazardous materials in a quantity requiring placarding.

## **SECTION 4: IMPLEMENTATION CRITERIA FOR EMPLOYEES**

### **A. Conditions for Testing and Methodology**

1. Testing of currently employed individuals will occur in the following circumstances (in addition to all DOT mandated circumstances):
  - a. An employee will be tested if he or she reports to work and there is reasonable suspicion to believe the employee is under the influence or impaired by controlled substances. "Reasonable suspicion" is a belief based on objective and articulable facts sufficient to lead a trained supervisor to suspect that the person is using drugs. All such incidents shall be reduced to writing prior to the actual testing of the person in question (refer to procedures as defined in Section 5).
  - b. Non-DOT Employees involved in an incident/accident will be tested once an individualized determination is made under any of the following circumstances: 1) the employee involved in the incident/accident was actively engaged in the activity which objectively could have caused or contributed to the injury or damage; or 2) the employee was operating, controlling, or repairing any machinery, tool, device, equipment or vehicle that was involved in the incident/accident; or 3) the employee's action or in-action was likely a contributing factor to the incident/accident or cannot be completely discounted as a contributing factor based on current info; or 4) testing is being conducted as part of the Company's Post Incident/Accident Investigation related to possible Workers' Compensation Disqualification; or 5) testing is being conducted for other non-injured employees whose actions, or in-action, could have contributed to the incident/accident as part of a root cause investigation; or 6) post-accident

drug testing is required by the Workers' Compensation State Compliant Drug Free Workplace Policy as a loss time injury, or by the Workers' Compensation Carrier, Site Owner, Customer, or General Contactor as part of premises access requirement.

The employee will be tested within thirty-two (32) hours after a confirmed accident, or within thirty-two (32) hours after the employee reports an accident. For purposes of this section, "involved" shall mean the injured party or any other employee present at the scene who, in the opinion of the investigating authority, could have prevented or had the responsibility for preventing the accident. All DOT CDL regulated drivers refer to the DOT supplemental section for post-accident testing clarification.

- c. The Company may require a drug test of any employee involved in, or associated with, an accident, or serious near-miss, which results in the damage, theft, or injury to Company equipment, vehicles, materials, private property, customer property, other Company personnel, or non-Company individuals. Final determination to test an employee shall be made by a management official as part of a post-accident individualized determination and investigation. The employee will be tested within the first 8 hours but not later than 32 hours after a confirmed accident, or within 8 hours but not later than 32 hours after the employee reports an accident.
  - d. When an employee or person is found in possession of suspected illicit or unauthorized drugs, alcohol or prohibited paraphernalia, or when any of these items are found in an area controlled or used exclusively by said person, a test will be administered.
  - e. Safety-Sensitive employees of a Region or Subsidiary of the Company will be subject to random drug tests if the Management of said Region or Subsidiary has elected to implement a random testing program pursuant to Section 7 of this Policy. Divisions may have expanded random testing categories, as allowable by State laws and the applicable CBA.
  - f. Under a random selection process, including random tests administered during the follow-up period following a Substance Abuse Professional (SAP) referral, a selected employee will be transported by his or her General Foreperson/Supervisor or other field or other management personnel immediately to a collection site. In this context, "immediately" means that all the employee's actions, after notification, lead to the expeditious submission of the urine specimen.
  - g. Switching, tampering with or adulterating any specimen or sample collected under the Company's policy for the purpose of testing for drugs or alcohol, or attempting to do so, or assisting another in an attempt to do so, is prohibited. Any such effort shall result in disciplinary action up to and including discharge.
  - h. Any employee who has been separated from active service for a period of 30 days or longer due to a Layoff and is recalled will be subject to a Pre-employment test.
2. The cost for initial testing and confirmatory testing (if required) will be covered by the Company. In the event an employee is required to remain out of work while awaiting test results and/or pursuant to a non-disciplinary suspension under this Policy, he will be compensated by the Company only in the event that either the initial or confirmatory test is negative. Nothing herein shall prevent the immediate discipline or termination of any employee found in possession of drugs in accordance with Company Disciplinary Policy.

3. Employees who test positive on an initial test and who test positive on an additional GC/MS confirmatory test, the results of which have been verified by an MRO, will be suspended or discharged and issues resolved as follows:
  - a. Other than the employee and the MRO, only Designated Employer Representatives will know the results of the test. Those Designated Employer Representatives are the employee's Supervisor, Region Manager, the Executive Director of Administration or their designees.
  - b. The Company's drug tests utilize minimum levels stipulated by DOT rule 49 section 40.87 for the initial test and confirmatory test. For a complete list of drugs tested by your region, please contact the Dayton Office. The term "illegal use of drugs" includes any controlled or scheduled drug not used in accordance with a health care provider's lawful prescription for the user, or any substances banned by Federal or applicable State laws.
  - c. If the initial positive drug test is not confirmed as positive, the results will be forwarded to the Company by the MRO and no action will be taken against the employee. The confirmatory test will automatically be performed by the laboratory.
  - d. If the initial drug screening is positive and the confirmatory test is positive, the results will be forwarded to the MRO. The MRO will interpret the confirmed positive laboratory test result and review the result with the employee to determine if there is any alternative medical explanation for the confirmed positive laboratory test result. The employee will be given the opportunity to offer an explanation. In the absence of an acceptable explanation, the employee will be removed from work. **It is Nelson Tree policy that a person who is tested positive on a drug test be placed on immediate non-disciplinary suspension or discharged.**
  - e. Employees who have a confirmed positive drug screen may have the original sample tested by a Substance Abuse and Mental Health Service Administration (SAMHSA) certified laboratory of their choice, at their own expense. This re-test must be requested in writing to the Company's MRO within sixty (60) days of the employee's receipt of the final test result from the MRO. Because it is possible that some analytes may deteriorate during storage, the results of a retest are to be reported as confirmation of the original test results if the detected level of the drug is: a) below the DOT established limit; and b) equal to or greater than the sensitivity of the test.
  - f. An employee whose positive test results are verified by the MRO must contact the Executive Director, Administration or her designee immediately to discuss the test results. Appropriate action to be taken as a result of the positive drug test will be left up to the judgment of the Company's Management. Should the employee be referred to an SAP, the employee must contact the SAP within 72 hours of said referral to commence treatment. Failure to report to the SAP within 72 hours shall result in the immediate termination of the employee and his or her becoming ineligible for rehire by the Company or any of its subsidiaries.
  - g. After release for return to work by the SAP, suspended employees will be required to undergo a Return to Duty test at the expense of the Employer prior to reinstatement and the results of said test must be negative. Following return to work, the employee will be put on probation for a minimum of twelve (12) months. During this probationary period the employee will be subject to follow-up drug tests as prescribed by the SAP, which may be administered without prior notice. The cost associated with 'follow-up' care will be the responsibility of the employee. **Employees placed on probation for violation of this Substance Abuse Policy or who have had a prior positive test during any period of prior employment with the Company, its Subsidiaries or Affiliates, who test positive in any type of future drug or alcohol test (an alcohol tests will considered positive if the BAT level is confirmed to be .04 or higher) or are otherwise deemed to have tested**

**positive pursuant to the terms of this Policy, will be terminated.**

- h. The samples will be collected only by trained technicians or other trained personnel in or at an appropriate facility. Chain of custody and other safeguards will be employed. Both the Company and the testing laboratory will employ the use of blind samples to ensure continued accuracy of the testing facility.
  - i. In the event the employee is unable to produce an adequate specimen for testing, up to 40 ounces of fluid may be given at the collection site to stimulate the ability to produce a specimen. If after a three (3) hour period, the employee is still unable to produce a specimen, the collecting facility shall notify the employer and refer the employee for immediate medical evaluation. If the medical evaluation does not identify a reason for the inability to produce a sample, it will be considered a refusal to provide a sample.
  - j. If an employee is observed attempting to substitute, or adulterate (adding water to the specimen bottle, for example), the urine sample, his or her employment will be terminated immediately. The detection of any adulterating substance in any sample shall also result in immediate termination.
  - k. Searches for illegal drugs and/or alcohol on Company property or job sites can be conducted at any time without notice. Company property includes vehicles, toolboxes, desks, etc., which are owned by the Company and used by the employees. Employees' personal property and vehicles are also subject to search while on Company property.
  - l. The Company will take reasonable precautions to ensure the even-handed application of this Policy.
  - m. The Company is committed to securing a safe, drug-free workplace with the greatest commitment to safety.
4. Post-Rehabilitation/Follow-up Testing: An employee who has voluntarily requested rehabilitation prior to a positive drug test will be placed on a non-disciplinary leave until employee completes an approved substance abuse program. Following completion for an approved program employee will be subject to drug and/or alcohol testing, testing will be conducted on an unannounced basis and continue for at least twelve (12) months, depending upon the SAP recommendation, from the return-to-work date. After release for return to work by the SAP, employees will be required to undergo a Return to Duty test at the expense of the Employer prior to reinstatement and the results of said test must be negative. Employees may only take advantage of this opportunity one time.

## **SECTION 5: MANAGEMENT PROCEDURES AND IMPLEMENTATION OF SUBSTANCE ABUSE POLICY**

All employees will receive and be required to sign an acknowledgement of receipt of a copy of the Policy.

Where there is reasonable suspicion to believe that an employee is impaired, the employee should not be allowed to continue work.

If the employee is suspected of being under the influence of alcohol, drugs or controlled substances, steps should be taken to ensure that he or she does not drive a motor vehicle.

Supervisors will complete the 60-minute Reasonable Suspicion Training on the specific, contemporaneous physical, behavioral and performance indicators of probable drug use and refer to the

Executive Director, Administration or her designee on any decision whether to conduct a urinalysis drug test or an alcohol test (DOT only).

Drug tests, with the exception of Non-DOT Pre-employment field testing (where applicable), will be conducted by a qualified collection facility, and proper chain of custody procedures will be observed for samples. Any field testing that results in a Non-Negative must be verified through the approved Laboratory.

If the employee refuses to take a requested test or refuses to cooperate with the administration of the drug test, the employee will be advised that the failure to cooperate with the drug test will be handled as a positive test result and the employee shall be deemed to have voluntarily quit his employment, but in this case only, shall he receive his earned entitlements (vacation pay). As indicated in this Policy, any Federal Department of Transportation or State Department of Transportation requirements for both drug and/or alcohol testing will be accomplished in accordance with those Federal or State requirements and shall be in addition to any requirements of this Policy.

## **SECTION 6: RANDOM TESTING**

Random alcohol and drug testing of certain employees is required pursuant to DOT and FMCSA Regulations and State law. In addition, employees in safety sensitive positions may be subject to drug tests if an owner, developer or customer requires the Employer to perform such tests as a condition of entering the work site, bidding or performing work for that owner, developer or customer. Regions may have expanded random testing categories, as allowable by particular State laws and the applicable CBA. Company management may elect to implement a random drug testing program that covers all safety-sensitive employees who are not already randomly tested pursuant to DOT and FMCSA Regulations or an agreement between the Company and an owner, developer or customer. Random testing programs implemented at the discretion of Management shall be governed by and comply with the procedures set forth in Section 4 of this Policy.

Subject to the above, selection for random testing shall be no more than four (4) times a year as provided herein or as stipulated in Section 4, Item 3(g) of the Substance Abuse Policy.

Pursuant to the regulations of the U.S. Department of Transportation, Title 49 CFR, the Company has implemented the required procedures for random and post-accident testing, defined in the Federal Motor Carrier Safety Regulations Part 382, that are in effect as of the date of this Policy. If at any time these regulations change, such changes shall become a part of this Policy without amendment and shall become effective as required.

A complete set of the DOT drug testing regulations, including changes, shall be a part of this Policy as if incorporated herein.

## **SECTION 7: CONFIDENTIALITY**

Information regarding an individual's drug testing or rehabilitation may be released only upon the written consent of the individual as per CFR 49 391.23 to a prospective employer, except that such information may be released regardless of consent to the Administrator or the representative of a State or Federal agency as part of an accident investigation, or an unemployment or worker's compensation proceedings, where required by the terms of a customer contract or in any litigation involving the employer and employee. Statistical data related to drug testing and rehabilitation that is not name-specific and training records may be made available to the Administrator or the representative of a State agency upon request.

The Employer shall allow access to its property and records by its customers, the DOT Administrator, and if the Employer is subject to the jurisdiction of a State agency, a representative of the State agency for the purposes of monitoring compliance with the requirements of law.

**U.S. Department of Transportation  
(DOT)**

**Federal Motor Carrier Safety Administration  
(FMCSA)**

**49 CFR PART 382  
CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING POLICY**

**for**

**Company and its Subsidiaries and Affiliate Companies**

**Hereafter referred to as: the “Company”**

**Updated: August 31, 2016**

**SECTION A - GENERAL**

This policy and 49 CFR Part 40 Regulations of the U. S. Department of Transportation Procedures For Transportation Workplace Drug And Alcohol Testing Programs and Urine Specimen Collection Guidelines, Office of Drug and Alcohol Policy and Compliance, U.S. Department of Transportation, are integral parts of this Policy and apply to all covered employees. They may be viewed at <http://www.dot.gov/odapc> Collection procedures, laboratory procedures, MRO review, alcohol testing, record keeping and all other procedural requirements shall adhere to 49 CFR Part 40.

Employees subject to the foregoing SUBSTANCE ABUSE POLICY who are also subject to Federal and/or State DOT testing requirements for drugs and alcohol will be subject to the following additional requirements and regulations. This supplemental statement is not intended to be a comprehensive statement since the specific requirements are set forth in both Federal and State laws and regulations, which are hereby incorporated herein by reference together with any future amendments and/or modifications to the extent they are mandatory.

**Scope of Policy**

This policy applies to all regular full-time, part-time, seasonal, on-call and temporary employees who are required to hold a Commercial Driver’s License (CDL) for their position. All applicants for employment positions requiring a CDL are required to pass a drug test as a prerequisite of employment, prior to final hiring. Any applicant who refuses a drug test, or tested positive for controlled substances will not be considered for employment, although they may reapply for employment in the future.

Participation in the Company’s controlled substance and alcohol testing program is required of each driver and therefore, is a condition of employment.

**Compliance with Regulations**

All CDL drivers subject to alcohol and controlled substance testing must be in compliance with this policy at all times when working for the Company.

## **Prohibitions**

The following is considered prohibited conduct under this policy:

1. No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater.
2. No driver shall use alcohol while performing safety-sensitive functions.
3. No driver shall perform safety-sensitive functions within four hours after using alcohol.
4. No driver required to take a post-accident alcohol test under 49 CFR 382.303 shall use alcohol for eight (8) hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.
5. No driver shall refuse to submit to a pre-employment controlled substances test, post-accident, random, reasonable suspicion, return to duty, or follow-up controlled substance and/or alcohol test required by 49 CFR Part 382.
6. No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner, who has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle.
7. No driver shall report for duty, remain on duty or perform a safety-sensitive function, if the driver tests positive for controlled substances.
8. The Company shall not permit a driver to continue to perform safety sensitive functions if the Company has actual knowledge of a driver violating any of the aforementioned prohibitions.
9. The Company can obtain actual knowledge based on the employer's direct observation of the employee, information provided by the driver's previous employer(s), a traffic citation for driving a CMV while under the influence of alcohol or controlled substances, or an employee's admission of alcohol or controlled substances use, except as discussed in the Company's voluntary self-identification program.

## **Definitions**

**Actual Knowledge** – Actual knowledge by an employer that a driver has used alcohol or controlled substances based on the employer’s direct observation of the driver, information provided by the driver’s previous employer(s), a traffic citation/arrest for driving a CMV while under the influence of alcohol and/or controlled substance, or a driver’s admission of alcohol or controlled substance use under the provisions of 49 CFR 382.121. Direct observation as used in this definition means observation of alcohol or controlled substance use and does not include observation of driver behavior or physical characteristics sufficient to warrant reasonable suspicion testing under 49 CFR 382.307.

**Alcohol** – The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

**Alcohol Concentration/Content** – The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test.

**Alcohol screening device (ASD)** – A breath or saliva device, other than an evidential breath testing device (EBT), that is approved by the National Highway Traffic Safety Administration (NHTSA) and placed on a conforming products list (CPL) for such device.

**Alcohol Test** – A test administered by a breath alcohol technician (BAT) on a breath specimen of an employee using a breath testing device (EBT). Also, any other test deemed such and conducted as on scene post-accident testing by federal, state or local officials.

**Alcohol Use** – The consumption of any beverage, liquid mixture, or preparation, including any medication containing alcohol.

**CFR** – Code of Federal Regulations.

**Collection Site** – A place designated by the Company where individuals present themselves for the purpose of providing a urine specimen for a drug test.

**Commercial driver's license (CDL)** means a license issued to an individual by a State or other jurisdiction of domicile, in accordance with the standards contained in this part, which authorizes the individual to operate a class of a commercial motor vehicle.

**Commercial motor vehicle (CMV)** means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle—

- (1) Has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds), whichever is greater; or
- (2) Has a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 pounds or more), whichever is greater; or
- (3) Is designed to transport 16 or more passengers, including the driver; or
- (4) Is of any size and is used in the transportation of **hazardous materials** as defined in this section.

**Confirmation and/or Confirmatory Drug Test** – A second analytical procedure performed on a urine specimen to identify and quantify the presence of a specific drug or drug metabolite.

**Confirmation and/or Confirmatory Validity Test** – A second test performed on a urine specimen to further support a validity test result.

**Confirmed Drug Test** – A confirmation test result received by an MRO from a laboratory.

**Consortium/Third-party Administrator (C/TPA)** – A service agent that provides or coordinates the provision of a variety of drug and alcohol testing services for the Company. C/TPAs typically perform administrative tasks concerning the operation of the company's drug and alcohol testing programs. This term includes, but is not limited to, groups or employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members. C/TPAs are not "employers."

**Controlled Substances** – Those substances identified in 49 CFR, Section 40.85, as amended.

In accordance with FMCSA rules, a urinalysis will be conducted to detect the presence of the following substances:

1. Marijuana metabolites
2. Cocaine metabolites
3. Opiates metabolites
4. Amphetamines
5. Phencyclidine (PCP)

Detection levels requiring a determination of a positive result shall be found in 49 CFR, Section 40.87, as amended.

**Designated Employer Representative (DER)** – An individual identified by the employer as able to receive communications and test results from service agents and who is authorized to take immediate actions to remove drivers from safety-sensitive duties and to make required decisions in the testing and evaluation process. The individual must be an employee of the Company. Service agents cannot serve as DERs.

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

1. Inclusions – Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.
2. Exclusions –
  - a.) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.
  - b.) Tire disablements without other damage even if no spare tire is available.
  - c.) Headlight or taillight damage
  - d.) Damage to turn signals, horn, or windshield wipers which makes them inoperative.

**DOT** - United States Department of Transportation.

**Driver** – Any person who operates a CMV. This includes, but is not limited to: full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent owner-operator contractors.

**FMCSA** – Federal Motor Carrier Safety Administration, United States Department of Transportation.

**Licensed Medical Practitioner** – A person who is licensed, certified, and/or registered, in accordance with applicable federal, state, local, or foreign laws and regulations, to prescribe controlled substances and other drugs.

**Medical Review Officer (MRO)** – A person who is a licensed physician (Doctor of Medicine or Osteopathy) and who is responsible for receiving and reviewing laboratory results generated by the Company's drug testing program and evaluating medical explanations for certain drug test results.

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

**Prescription Medications** – The use (by a driver) of legally prescribed medications issued by a licensed health care professional familiar with the driver's work related responsibilities.

**Refusal to Submit** – A driver with regard to an alcohol and/or controlled substance testing:

**Safety-Sensitive** – Safety-sensitive employees in [non-DOT positions] are those employees who discharge duties so fraught with risks of injury to self or others, environmental injury and/or property damage, that even a momentary lapse of attention can have disastrous consequences. It is an essential job function safety rule applicable to every employee working in a safety-sensitive classified position to be able to work in a constant state of alertness and in a safe manner.

1. Fails to show up for any test (except a pre-employment test) within a reasonable time after being directed to do so by the Company. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a Consortium/Third Party Administrator);
2. Fails to remain at the testing site until the testing process is complete; provided, that an applicant who leaves the testing site before the testing process commences for a pre-employment test is not deemed to have refused a test. The testing process commences once the applicant has been provided the specimen collection cup.
3. Fails to provide a urine specimen for any drug test or breath or saliva sample for an alcohol test required by 49 CFR Part 382, if the employee leaves after the testing process has commenced;
4. In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the provision of a specimen;
5. Fails to provide a sufficient amount of urine, breath or saliva when directed, unless it has been determined, through a required medical evaluation, that there was an adequate medical explanation for the failure to provide.
6. Fails or declines to take a second test the employer has directed following a negative dilute result as required by 40.197(b);
7. Fails to undergo an additional medical examination, as directed by the MRO as part of the verification process, or as directed by the Designated Employer Representative (DER) concerning the evaluation as part of the "shy bladder" procedures in 49 CFR Part 40, subpart I; or fail to undergo a medical examination or evaluation as directed by the employer as part of the insufficient breath procedures outlined in 40.265(c).

8. Fails to cooperate (e.g. refuses to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process, fail to wash hands after being directed to do so by the collector) or otherwise interferes with any part of the testing process.
9. Fails to sign the certification at Step 2 of the alcohol testing form (ATF).
10. Is reported by the MRO as having a verified adulterated or substituted test result.
11. For an observed collection, fail to follow the observer's instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process.
12. Possess or wear a prosthetic or other device that could be used to interfere with the collection process.
13. Admit to the collector or MRO that you adulterated or substituted the specimen.

**Safety-Sensitive Functions** – Include:

1. All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the Company.
2. All time inspecting equipment as required by 49 CFR 392.7 and 392.8 or otherwise inspecting, servicing, or conditioning any CMV at any time;
3. All time spent at the driving controls of a CMV in operation;
4. All time, other than driving time, in or upon any CMV, except time spent resting in a sleeper berth conforming to the requirements in 49 CFR 393.76;
5. All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
6. All time repairing, obtaining assistance, or remaining in attendance upon a disable vehicle.

**Screening test (initial test)** – Means:

1. In drug testing, a test to eliminate “negative” urine specimens from further analysis or to identify a specimen that requires additional testing for the presence of drugs.

2. In alcohol testing, an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in a breath or saliva specimen.

**Screening Test Technician (STT)** – A person who instructs and assists employees in the alcohol testing process and operates an alcohol screening device (ASD).

**Stand-down** – The practice of temporarily removing a driver from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive drug test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test results.

**Substance Abuse Professional (SAP)** – A person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning educations, treatment, follow-up testing, and aftercare. A SAP must be a:

1. Licensed physician (Doctor of Medicine or Osteopathy);
2. Licensed or certified social worker;
3. Licensed or certified psychologist;
4. Licensed or certified employee assistance professional; or
5. Drug and alcohol counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NAADAC) or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (ICRC).

### **Prohibited Conduct**

1. Alcohol Prohibitions – 49 CFR Part 382, B, prohibits any alcohol misuse that could affect performance of safety-sensitive functions.

The alcohol prohibition includes:

- a. Use while performing safety-sensitive functions;
- b. Use during the 4 hours before performing safety-sensitive functions;
- c. Reporting for duty or remaining on duty to perform safety-sensitive functions with an alcohol concentration of 0.04 or greater;
- d. Use of alcohol for up to 8 hours following an accident or until the driver undergoes a post-accident test; or

e. Refusal to take a pre-employment controlled substance test, a post-accident, random, reasonable suspicion, return-to-duty or follow-up controlled substances or alcohol test.

2. Controlled Substance Prohibitions – 49 CFR Part 382, Subpart B, prohibits any drug use that could affect the performance of safety-sensitive functions.

This drug prohibition includes:

a). Use of any drug, except when administered to a driver by, or under the instructions of, a licensed medical practitioner, who has advised the driver that the substance will not affect the driver's ability to safely operate a commercial motor vehicle. Under federal law, the use of marijuana or any Schedule I drug does not have a legitimate medical use in the United States. While its use may be authorized under state laws, marijuana is illegal under federal law and therefore is considered an illegal and/or unauthorized controlled substance for purposes of this policy. Accordingly, having any detectable level of marijuana in your system while working is prohibited and will result in a violation of this policy, even if lawfully used outside of work

b). Testing positive for drugs; or

c). Refusing to take a required test.

All drivers will inform their supervisor of therapeutic drug use prior to performing a safety-sensitive function. He/she will be required to present written evidence from a health care professional which describes the effects such medications may have on the driver's ability to perform his/her tasks.

49 CFR 382.413 (g) prohibits an employer from using a driver to perform safety-sensitive functions if the employer obtains information that the driver failed an alcohol test or tested positive for drugs, unless the employer has obtained information that the driver has complied with the provisions of 49 CFR 382.605 and 49 CFR part 40, Subpart O.

49 CFR part 40, Subpart O requires a driver who fails an alcohol test at 0.04 or greater, tests positive for drugs, refuses a controlled substances or alcohol test, or violates other Prohibited Conduct to:

1. Undergo an evaluation by a substance abuse professional (SAP);
2. Complete any treatment recommended by the SAP;
3. Undergo a return to duty test with a result indicating an alcohol concentration of less than 0.02 or a verified negative result for controlled substance use;

4. Be subject to follow-up testing on at least six occasions in 12 months and other follow up tests as determined by the SAP for up to 60 months.

### **Alcohol Concentrations of 0.02 or Greater but less than 0.04**

As per FMCSA regulation 49 CFR 382.505, a driver found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall not perform, nor be permitted to perform, safety-sensitive functions for at least 24 hours. The driver will not be paid for work-time lost as a result of this section. The driver will not be required to undergo evaluation by a SAP if the test is 0.02 or greater but less and 0.04, nor will a return-to-duty test be required unless there is reasonable suspicion that the employee is still under the influence of alcohol.

### **Circumstances for Testing**

Pre-Employment Testing – 49 CFR 382.301, all driver applicants will be required to submit to and pass a urine drug test as a condition of employment.

Each driver applicant will be asked whether he/she has tested positive, or refused to test, on any pre-employment drug test administered by an employer to which the driver applicant applied for, but did not obtain, safety-sensitive transportation work during the past two years.

If the driver applicant admits that he/she has tested positive, or refused to test, on any pre-employment drug test the driver applicant may not perform any safety-sensitive functions for the company until and unless the driver applicant documents successful completion of the return-to-duty process, 49 CFR part 40, Subpart O .

Driver applicant drug testing shall follow the collection, chain-of-custody, and reporting procedures set forth in 49 CFR Part 40.

An employee of the Company transferring to a driving position is also subject to and must pass a urine drug test as a condition of the transfer. A current employee meeting the aforementioned condition who tests positive for drugs, will be denied the driving position and be referred to a SAP. The employee must follow the SAP's recommendations before returning to their non-driving job. All costs are the responsibility of the employee, not the Company.

Reasonable Suspicion Testing – 49 CFR 382.307, if the driver's supervisor or another company official designated to supervise drivers believes a driver is under the influence of alcohol or drugs, the driver will be required to undergo a drug and/or alcohol test.

The basis for this decision will be specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver.

The driver's supervisor or another company official will immediately remove the driver from any and all safety-sensitive functions and take the driver or make arrangements for the driver to be taken to a testing facility.

\*NOTE\* - Under NO circumstances should the supervisor or other company official allow the employee to drive him/herself to the testing facility for reasonable suspicion testing. The Company will provide transportation to the testing facility and provide transportation back to the driver's residence.

The person who makes the determination that reasonable suspicion exists to conduct an alcohol test may not administer the alcohol test.

As per the FMCSA regulations, reasonable suspicion alcohol testing is only authorized if the observations are made during, just preceding, or after the driver is performing a safety-sensitive function.

The supervisor or company official observing the indicators of drug and/or alcohol impairment must have undergone training as per 49 CFR 382.603. A written report shall be prepared by the supervisor or company official observing the behavior as soon as feasible, but no longer than 24 hours from the observed behavior or before the results of the alcohol or controlled substances test are released, whichever is first. The report shall be as detailed as possible, describing all indicators/observations made.

If an alcohol test is not administered within two hours following a reasonable suspicion determination, the program administrator will prepare and maintain a record stating the reasons why the test was not administered within two hours.

If the test was not administered within eight hours after a reasonable suspicion determination, all attempts to administer the test shall cease. A record of why the test was not administered must be prepared and maintained.

The Company shall not permit a driver to report for duty, remain on duty, perform, or continue to perform any safety-sensitive functions while the driver is impaired by alcohol, as shown by the behavioral, speech, or performance indicators of alcohol misuse, until:

- 1) An alcohol test is administered and the driver's alcohol concentration measures less than 0.02 percent; or
- 2) The start of the driver's next regularly scheduled duty period, but not less than twenty four (24) hours following the supervisor's determination that reasonable suspicion exists.

A driver awaiting the results of a reasonable suspicion drug test will be placed on unpaid leave until the results of the test are known.

Post-Accident Testing – 49 CFR 382.303, drivers are to notify their supervisor as soon as possible if they are involved in an accident.

If the accident meets the criteria set forth below, testing shall be performed.

Type of accident involved	Citation issued to the CMV driver *	Test must be performed by employer
i. Human fatality	YES	YES
	NO	YES
ii. Bodily injury with immediate medical treatment away from the scene	YES	YES
	NO	NO
iii. Disabling damage to any motor vehicle requiring tow away	YES	YES
	NO	NO

\*If a driver receives a citation within thirty-two hours of the occurrence under State or local law for a moving traffic violation arising from the accident, testing for controlled substance is required. If a driver receives a citation within 8 hours of the occurrence under State or local law for a moving traffic violation arising from the accident, testing for alcohol is required.

Alcohol Tests - If a test required by this section is not administered within two hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within eight hours following the accident, the employer shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the FMCSA upon request.

Controlled Substance Tests - If a test required by this section is not administered within 32 hours following the accident, the employer shall cease attempts to administer a controlled substances test, and prepare and maintain on file a record stating the reasons the test was not promptly administered. Records shall be submitted to the FMCSA upon request.

Law Enforcement Tests – Under certain circumstances, a Federal, State, or Local Law Enforcement Agency investigating an accident may take breath, blood and/or urine sample from the driver. These samples may be used to satisfy the testing requirement of 49 CFR 382.303 as long as the Company is able to obtain copies of those results.

Random Testing – 49 CFR 382.305, the Company will conduct random testing for all drivers as follows:

1. The Company will use a company wide selection process based on a scientifically valid method, prescribed by FMCSA regulations or;

2. The Company will use a certified testing agent provided by third party administrator eScreen. They will use a selection process based on a scientifically valid method, prescribed by FMCSA regulations.
3. The Program Administrator will administer the random testing program, and maintain all pertinent records on random tests administered.

At least 10 percent of the average number of driver positions will be tested for alcohol each year, as amended by FMCSA. At a minimum 25 percent of the average number of driver positions will be tested for drugs each year, as amended by FMCSA.

The random testing will be spread reasonably throughout the calendar year. All random alcohol and drug tests will be unannounced, with each driver having an equal chance of being tested each time selections are made.

A driver may only be tested for alcohol while he/she is performing a safety-sensitive function, just before performing a safety-sensitive function, or just after completing a safety-sensitive function.

Once notified that he/she has been randomly selected for testing, the driver must proceed immediately to the assigned collection site.

Return to Duty Testing – 49 CFR 382.309, after failing an alcohol test, a driver must undergo a return-to-duty test prior to performing a safety-sensitive function. The test result must indicate a breath alcohol concentration of less than 0.02. After testing positive for controlled substances, a driver must undergo a same gender direct observation return-to-duty test prior to performing a safety-sensitive function. The test must indicate a verified negative result for drug use.

Follow-up Testing – 49 CFR 382.311, following the driver's violation of 49 CFR Part 382, Subpart B, the driver will be subject to follow-up testing. Follow-up testing will be unannounced. The number and frequency of such follow-up testing will be directed by the SAP, and consist of at least six tests in the first 12 months. Follow-up testing may be done for up to 60 months. Controlled substances follow-up testing will be conducted by a same gender direct observation collection.

Refusal to Submit – According to 49 CFR 382.211, a driver may not refuse to submit to a pre-employment controlled substances, post-accident, random, reasonable suspicion, return to duty or follow-up alcohol or controlled substance test required by the regulations. A driver who refuses to submit to such tests may not perform or continue to perform safety-sensitive functions and must be evaluated by a substance abuse professional (SAP) as if the driver tested positive for drugs or failed an alcohol test result of 0.040 or greater. Refusal to submit includes failing to provide adequate breath or urine sample for alcohol or drug testing and any conduct that obstructs the testing process. This includes adulteration or substitution of a urine sample. Refer to the definitions in this supplement for a complete list of "refusals to test".

## **Alcohol Testing Procedures**

Alcohol testing will be conducted at by a qualified breath alcohol technician (BAT) or screening test technician (STT), according to 49 CFR Part 40 procedures.

Only products on the conforming products list (approved by NHTSA) and Part 40 requirements will be utilized for testing under this policy.

If the reading on the EBT or ASD is less than 0.02, both the driver and the BAT or STT must sign and date the result form. The form will then be confidentially forwarded to the company's designated employer representative, Vicki Hoffman or Jo Ann Swank (DER).

If the reading on the EBT or ASD is 0.02 or more, a confirmation test must be performed. An EBT must be used for all confirmation tests.

To ensure the integrity and accuracy of each test, all specimen collection, analysis, and laboratory procedures shall be conducted in accordance with DOT procedural protocols and safeguards as set forth in 49 CFR Part 40.

**J. Drug Testing Procedures** – Drug testing will be conducted by ALERE TOXICOLOGY. Specimen collection will be conducted in accordance with 49 CFR Part 40 and any applicable state law. The collection procedures have been designed to ensure the security and integrity of the specimen provided by each driver. The procedures will strictly follow federal chain of custody guidelines.

A drug testing custody and control form (CCF) will be used to document the chain of custody from the time the specimen is collected at the testing facility until it is tested at the laboratory.

A collection kit meeting the requirements of 49 CFR Part 40, Appendix A must be used for the drug test.

The driver will be asked to remove all unnecessary outer garments (coat, jacket) and secure all personal belongings. The driver may keep his/her wallet.

The driver will be asked to provide his/her specimen in a room that allows for privacy unless direct observation is required by 49 CFR Part 40.67.

Once a 45 mL sample is provided, it must be split into a primary specimen of 30 mL and a second specimen of 15 mL. Only the primary (30 mL) specimen is used for testing. The second (15 mL) specimen may be used for a second confirmation test if requested by the employee.

To ensure the integrity and accuracy of each test, all specimen collection, analysis, and laboratory procedures shall be conducted in accordance with DOT procedural protocols and safeguards as set forth in 49 CFR Part 40.

### **Laboratory Analysis & Results**

As required by 49 CFR Part 40 regulations, only a laboratory certified by the Department of Health and Human Services (DHSS) to perform urinalysis for the presence of controlled substance will be retained by the Company laboratory will be required to maintain strict compliance with federally approved chain-of-custody procedures, quality control, maintenance, and scientific analytical methodologies.

All specimens are required to undergo an initial screen followed by confirmation of all positive screen results.

According to 49 CFR Part 40 regulation, the laboratory must report all test results directly to the Company's medical review officer (MRO). All test results must be transmitted to the MRO in a timely manner, preferably the same day that they were reviewed by the certifying scientist. All results must be reported.

The MRO is responsible for reviewing and interpreting all confirmed positive, adulterated, substituted, or invalid drug test results. The MRO must determine whether alternate medical explanations could account for the test results. The MRO must also give the driver who has a positive, adulterated, substituted, or invalid drug test an opportunity to discuss the results prior to making a final determination. After the decision is made, the MRO must notify the DER.

If the MRO, after making and documenting all reasonable efforts, is unable to contact a tested driver, the MRO shall contact the DER instructing him/her to contact the driver. The DER will arrange for the driver to contact the MRO before going on duty.

The MRO may verify a positive, adulterated, substituted, or invalid drug test without having communicated with the driver about the test results if:

1. The driver expressly declines the opportunity to discuss the results of the test.
2. Neither the MRO or DER has been able to make contact with the driver for 10 days; or
3. Within 72 hours after a documented contact by the DER instructing the driver to contact the MRO, the driver has not done so.

**Split Sample** – As required by 49 CFR Part 40 regulations, the MRO must notify each driver who has a positive, adulterated, substituted, or invalid drug test result that he/she has 72 hours to request the test of the split specimen. If the driver request the testing of

the split specimen, the MRO must direct (in writing) the lab to provide the split specimen to another certified laboratory for analysis.

The driver will pay for the testing of a split specimen.

Specimen Retention – Long-term frozen storage will ensure that positive urine specimens will be available for any necessary retest. The Company's designated drug testing laboratory will retain all confirmed positive specimens for at least 1 year in the original labeled specimen bottle.

### **Confidentiality/Recordkeeping**

All driver alcohol and controlled substance test records are considered confidential as per 49 CFR 382.401. For the purpose of this policy/procedure, confidential recordkeeping is defined as records maintained in a secure manner, under lock and key, accessible only to the program administrator, Vicki Hoffman.

If the program administrator is unavailable, Jo Ann Swank will have access to the alcohol and controlled substance records.

Driver alcohol and controlled substance test records will only be released in the following situations:

1. To the driver, upon his/her written request;
2. Upon request of a DOT agency with regulatory authority over the Company;
3. Upon request of state or local officials with regulatory authority over the Company;
4. Upon request by the United States Secretary of Transportation;
5. Upon request by the National Transportation Safety Board as part of an accident investigation;
6. Upon request by subsequent employers upon receipt of a written request by a covered driver;
7. In a lawsuit, grievance, or other proceeding if it was initiated by or on behalf of the complainant and arising from results of the tests; or
8. Upon written consent by the driver authorizing the release to a specified individual.

All records will be retained for the time period required in 49 CFR 382.401.

## **Driver Assistance**

As per 49 CFR 382.601 all drivers will be given information regarding the requirements of 49 CFR Part 382 and this policy by their supervisor.

## **Referral, Evaluation and Treatment**

As per 49 CFR 382.605 and 49 CFR Part 40, Subpart O, a list of substance abuse professionals will be provided to all drivers who fail an alcohol test, test positive for drugs, refuse a drug or alcohol test, or violate the Prohibited Conduct.

The cost of evaluation by the SAP and any treatment will be the responsibility of the driver.

## **Consequences of Violation of this Policy**

The Company may not stand-down a driver before the MRO has completed his/her verification process unless the company has applied for and has received an FMCSA issued waiver.

According to FMCSA regulation, no person who has failed an alcohol or drug test, or refused to test, will not be allowed to perform safety-sensitive functions until the referral, evaluation, and treatment requirements have been complied with. The following company disciplinary measures apply to all reasonable suspicion, post-accident, and random tests.

Controlled substance positive test results – Upon notification that a driver has a drug test result of positive, adulterated, substituted, or invalid, the driver will be given the option of requesting a test of the split sample within 72 hours. If the driver has requested a test of the split sample, the driver will be placed on unpaid leave until the results of the test are known.

If the driver does not request a split sample test or the split sample test confirms the initial positive, adulterated, substituted, or invalid drug test result, the driver will be subject to disciplinary action up to and including termination.

Refusal to Test – A driver's refusal to test for alcohol or controlled substances will be considered a positive test result. Adulteration or tampering with a urine or breath sample is considered conduct that obstructs the testing process and is considered a refusal to test. A driver whose conduct is considered a refusal to test will be subject to disciplinary action up to and including termination.

Failed Alcohol Test Result – Upon notification that a driver has failed an alcohol test (0.04% BAC or greater), the driver will be immediately removed from safety-sensitive functions. The driver will be subject to disciplinary action up to and including termination.

Upon notification that a driver tested 0.02% BAC or greater, but less than 0.04% BAC in initial and confirmatory tests for alcohol, the driver will be removed from safety-sensitive functions for at least a 24 hour period following the test. The driver will not be paid for time lost as a result of this test. The employee will not be required to undergo evaluation by a SAP nor will return-to-duty testing be required unless there is reasonable suspicion that the employee is still under the influence.

### **Self-Identification**

The company encourages drivers who recognize that they may have a problem with drugs and/or alcohol to seek assistance for resolving that problem before they have a FMCSA violation due to a positive test result or because they engaged in other FMCSA prohibited conduct. A driver who admits to a drug and/or alcohol problem will not be assumed to have a FMCSA violation. He/she will be given an opportunity to obtain a chemical use assessment from a company approved contracted service provider. Prior to the assessment, however, the company will require the driver to sign a release of information that will enable the company DER to receive the results of the assessment, and to receive subsequent reports related to the assessment, and the driver's successful completion of all recommendations for assistance.

The following conditions must apply to the driver's self-identification:

- The driver's admission cannot be made during his/her on-duty time. It must occur prior to the driver's reporting for duty on any particular day.
- The driver's admission cannot be made in an attempt to avoid a required FMCSA drug test.
- 49 CFR Part 382.121, FMCSA requires the company to remove the driver from safety-sensitive functions, including driving.
- When the company DER is satisfied that the driver has successfully complied with the contracted service provider's recommendations for assistance, the company will return the driver to safety-sensitive functions, provided that:
  - Prior to returning to safety-sensitive functions, the driver will be required to provide a negative DOT drug and/or alcohol test result, and
- A driver who self-identifies under this policy, and who then fails to comply with the contracted service provider's recommendations will be considered to have engaged in conduct prohibited by the FMCSA in 49 CFR Part 382, Subpart B, and will not be permitted to return to safety-sensitive function until he/she has successfully complied with the SAP return-to-duty process.

The company will adhere to the following terms, in accordance with 49 CFR Part 382.121;

- The company will take no adverse action against a driver who admits to drug and/or alcohol use under the terms above, provided he/she cooperates with the assessment and recommendations for treatment.
- A driver who self-identifies under this program will be given reasonable time to obtain the required assessment and assistance. Under independent authority, the company requires the assessment process to be initiated within five (5) days of the driver's disclosure.
- A driver who complies with all requirements, and who complies satisfactorily with the contracted service provider's recommendations for assistance, will be permitted to return to safety-sensitive functions.
- A driver who cooperates and successfully complies with this program will not be considered to have had a FMCSA violation of prohibited conduct under 49 CFR Part 382, Subpart B.
- A driver who fails to comply with treatment recommendations, either under this provision, or as recommended by a SAP, will be subject to disciplinary action up to and including termination of employment.

### **Notice/Document**

All recruitment announcements for a CDL position, including in-house recruitment and promotion, will disclose that a drug screening test will be required of the applicant.

The Company will provide each person subject to this policy a copy of this policy. The Company will also provide printed material which describes the effects of alcohol and/or controlled substance and methods of treatment or intervention for drug or alcohol abuse.

### **Severability**

In the event that a Court finds that any provisions of this policy are void or unenforceable, the remaining provisions shall continue in full force and effect.

- The employer will not pay for rehabilitation nor will it hold open the job of any covered employee who has engaged in prohibited conduct.
- Any covered employee who is found to be under the influence of alcohol while driving a Company vehicle will be terminated.
- A covered employee that tests positive for drugs without misconduct will be placed on immediate non-disciplinary suspension for their first positive test, and will be required to contact and enroll in a SAP within 72 hours.
- A second positive test will permanently disqualify the individual from employment with the Company.
- Educational materials will be made available to all covered employees explaining the law. Supervisors designated to enforce this policy will be given at least 60 minutes of training on alcohol misuse and 60 minutes of training on drug use.
- All testing requirements of Federal and State law, including confirmatory testing are incorporated by reference herein.