**ALCOHOL AND DRUG ABUSE POLICY**

**STATEMENT OF PURPOSE AND POLICY**

Drivers are an extremely valuable resource for Wind Walker Express business. Their health and safety is a serious company concern. Drug or alcohol use may pose a serious threat to driver health and safety. It is, therefore, the policy of Wind Walker Express to prevent substance use or abuse from having an adverse effect on our drivers. Wind Walker Express maintains that the work environment is safer and more productive without the presence of alcohol, illegal or inappropriate drugs in the body or on company property. Furthermore, drivers have a right to work in an alcohol and drug-free environment and to work with drivers free from the effects of alcohol and drugs. Drivers who abuse alcohol or use drugs are a danger to themselves, their coworkers and the Company's assets.

The adverse impact of substance abuse by drivers have been recognized by the federal government. The Federal Motor Carrier Safety Administration (FMCSA) has issued regulations which require the company to implement a controlled substance abuse testing program. Wind Walker Express will comply with these regulations and is committed to maintaining a drug free workplace. All drivers are advised that remaining drug-free and medically qualified to drive are conditions of continued employment with Wind Walker Express.

**Specifically, it is the policy of Wind Walker Express that the use, sale, purchase, transfer, possession or presence in one's system of any controlled substance (except medically prescribed drugs) by any driver while on company premises, engaged in company business, while operating company equipment, or while under the authority of Wind Walker Express is strictly prohibited**.

FMCSA states that the **mandatory testing must apply** to every person who operates a commercial motor vehicle in interstate or intrastate commerce and is subject to the CDL licensing requirement.

The execution and enforcement of the policy will follow set procedures to screen bodily fluids (urinalysis), conduct breath testing, and/or search all driver applicants for alcohol and drug use, and those drivers suspected of violating this policy who are involved in a US Department of Transportation (DOT) reportable accident or who are periodically or randomly elected pursuant to these procedures. These procedures are designed not only to detect violations of this policy, but to ensure fairness to each driver. Every effort will be made to maintain the dignity of drivers or driver applicants involved. **Disciplinary action will, however, be taken as necessary.**

Neither the policy nor any of its terms are intended to create a contract of employment or to contain the terms of any contract of employment. Wind Walker Express retains the sole right to change, amend or modify any terms or provisions of this policy without notice. This policy is effective January 1, 2014, and will supersede all prior policies and statement relating to alcohol or drugs.

**ADMINISTRATION GUIDE TO PERSONNEL**

**ALCOHOL AND DRUG TESTING PROCEDURES**

1. PURPOSE

The purpose of this administrative guide is to set forth the procedures for the implementation of controlled substances and alcohol use and testing of driver applicants and current drivers pursuant to the Alcohol and Drug Abuse Policy. These procedures are intended as a guide only, and are in no way intended to alter any existing relationship between Wind Walker Express and any driver.

Wind Walker Express's alcohol and drug program administrator designated to monitor, facilitate, and answer questions pertaining to these procedures is **Jolene Duncan**.

1. DEFINITIONS

When Interpreting or implementing these procedures, or the procedures required by the Federal Motor Carrier Safety Administration (FMCSA) controlled substance testing regulations the following definitions apply:

* **Alcohol** - means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.
* **Alcohol Concentration (or content)** - means the alcohol in a volume of breath expressed in terms of grams per 210 liters of breath as indicated by an evidential breath test under this part.
* **Collection Site** - means a place where individuals present themselves for the purpose of provided breath, bodily fluid, or tissue samples to be analyzed for specific controlled substances. This site must possess all necessary personnel, materials, equipment, facilities and supervision to provide for the collection, security, temporary storage and transportation or shipment of the samples to a laboratory.
* **Commercial Motor Vehicle** - means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:
* Has a gross combination weight rating of 26,001 or more pounds; or
* Has a gross weight vehicle rating of 26,001 or more pounds; or
* Is designed to transport 16 or more passengers, including the driver; or
* Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR, Part 172, 1308)
* **Driver** - means any person who operates a commercial motor vehicle. This includes, but is not limited to: Full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent owner-operator contractors who are either directly employed by or under lease to an employer or who operate a commercial motor vehicle at the direction of or with the consent of an employer. For the purpose of pre-employment/pre-duty testing only, the term "driver" includes a person applying to an employer to drive a commercial motor vehicle.
* **Drug** - means any substance (other than alcohol) that is a controlled substance as defined in the section and 49 CFR, Part 40.
* **FMCSA** - means the Federal Motor Carrier Safety Administration, US Department of Transportation.
* **Owner-operator(s)**- means a driver(s) who has been contracted or services with Wind Walker Express. For the purposes of these procedures and the Company's Alcohol and Drug Abuse Policy, owner-operators are not considered employees, but will be required to participate in the Company's Alcohol and Drug Abuse Policy like all Company employee drivers.
* **Medical Review Officer (MRO)** - means a licensed MD or DO with knowledge of drug abuse disorders that is employed or used by a motor carrier to conduct drug testing in accordance with this part.
* **Performing a safety-sensitive function** - means a driver is considered to be performing a safety-sensitive function during any period in which he/she is actually performing, ready to perform, or immediately available to perform and safety-sensitive functions.
* **Random Selection Process** - means that alcohol and drug tests are unannounced; that every driver of a motor carrier subject to test-tests conducted annually shall equal or exceed twenty-five percent (25%) for alcohol tests and fifty percent (50%) for drug test of the total number of drivers subject to testing of a motor carrier.
* **Reasonable cause** - means that the motor carrier believes the actions or appearance or conduct of a commercial motor vehicle driver who is on duty as defined below are indicative of the use of a controlled substance.
* **Safety-sensitive function** - means any of those on-duty functions set forth in CFR 49, Section 395.2
* **On Duty Time** - means all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved form work and all responsibility for performing work. " On Duty Time" shall include:
* All time at a carrier or shipper plant, terminal, or facility, or other property, or on any public property waiting to be dispatched, unless the driver has been relieved from duty by the motor carrier;
* All time inspecting, servicing, or conditioning any commercial motor vehicle at any time;
* All driving time;
* All time, other than the driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth;
* All time loading, 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.
* All time repairing, obtaining assistance, or remaining in attendance upon a disable vehicle.
1. **SUBSTANCES PROHIBITED/PRESCRIPTION MEDICATIONS**
2. **Alcohol use** means the consumption of any beverage, mixture or preparation, including any medication containing alcohol which, when consumed, causes an alcohol concentration n excess of those prescribed by Part 382 Subpart B, (FMCSR) and Section IV of this policy.
3. **Controlled Substances:** In accordance with FMCSA rules, urinalysis will be conducted to detect the presence of the following substances:
* Marijuana
* Cocaine
* Opiates
* Amphetamines
* Phencyclidine (PCP)

Detection levels requiring a determination of a positive result shall be in accordance with the guidelines adopted by the FMCSA in accordance with the recommendations established by the 49 CFR, Part 40.

1. **Prescription Medications** : Drivers taking legally prescribed medications issued by a licensed health care professional familiar with the drivers work-related responsibilities must report such use to their immediate supervisor or dispatcher, and may be required to present written evidence from the health care professional which describes the effects such medications may have on the driver's ability to perform his/her tasks.

In the sole discretion of the alcohol and drug program administrator, a driver may be temporarily removed, with pay, from safety-sensitive position if deemed appropriate.

1. **PROHIBITIONS**
2. **Alcohol Prohibitions**

The new alcohol rule prohibits any alcohol misuse that could affect performance of a safety- sensitive function, including;

* Use while performing safety-sensitive functions.
* Use during the 4 hours before performing safety-sensitive functions.
* Reporting for duty or remaining on duty to perform safety-sensitive functions with an alcohol concentration of 0.04 or greater.
* Possession of alcohol, unless the alcohol is manifested and transported as part of a shipment. This includes the possession of the medicines containing alcohol (prescription or over-the-counter), unless packaging seal is unbroken.
* Use during 8 hours following an accident, or until he/she undergoes a post accident test.
* Refusal to take a required test.

NOTE: 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 other Consequences imposed by the regulations and discussed below do not apply. However, documentation of this test constitutes written warning that company policy has been violated, and the next occurrence could result in disqualification of a driver.

1. **Drug Prohibitions**

The regulations prohibit any drug use that could affect performance of safety-sensitive functions, including;

* Use of any drug, except by doctor's prescription, and only if the doctor has advised the driver that the drug will not adversely affect the driver's ability to safely operate the CMV;
* Testing positive for drugs; and
* Refusing to take a required test.

All drivers will inform the alcohol and drug program administrator of any therapeutic drug use prior to performing a safety-sensitive function.

1. **DRIVER APPLICANT AND CURRENT DRIVER TESTING**
2. **Applicant Testing**

All driver applicants will be required to submit to and pass a breath alcohol test and a urine drug test as a condition of employment. Job applicants who are denied employment because of a positive test may reapply for employment after 6 months.

Offers of employment are made contingent upon passing the company's medical review, including the alcohol and drug test. Driver applicants who have received firm employment offers are to be cautioned against giving notice at this current place of employment, or incurring any cost associated with accepting employment with Wind Walker Express until after medical clearance has been received. All newly hired drivers shall be probationary status for 30 days, contingent upon medical clearance for illicit controlled substance or alcohol usage, as well as other conditions explained in the personnel policies. Under no circumstances may a driver perform a safety-sensitive function until a confirmed negative result is received.

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

1. **Owner - Operators:** Owner-Operators engaged by Wind Walker Express are not employees of Wind Walker Express, nor are they to be considered as such under this policy. However, every owner-operator engaged to provide services to Wind Walker Express must agree to, and successfully participate in the company's alcohol and drug testing program. All owner-operator agreements will be entered into by the company contingent upon the operators' successful completion of urinalysis and breath analysis under all phases of Wind Walker Express's program, and are contingent upon the owner-operators continued as a medically qualified driver.

The term "driver" as used in these procedures includes owner-operators.

1. **Employee Drivers:** Under all circumstances, when a driver is directed to provide either a breath test or a urine sample (Appendix C) in accordance with these procedures, he/she must immediately comply as instructed. Refusal will constitute a positive result, and the driver will be immediately removed from the safety sensitive function, and will be subject to further discipline and termination as appropriate.
2. **Suspicion Based Testing:**
* **Reasonable Suspicion:** If a driver is having work performance problems or displaying behavior that may be alcohol or drug related, or is otherwise demonstrating conduct that may be in violation of the policy where immediate management action is necessary, a supervisor or dispatcher, with the concurrence of the alcohol and drug program administrator, will require that derive to submit to a breath test or urinalysis. The following conditions are signs of possible alcohol or drug use (not all-inclusive):
* Abnormally dilated or constricted pupils
* Glazed stare - redness of eyes
* Flushed face
* Change of speech
* Constant sniffing
* Increased absences
* Redness under nose
* Sudden weight loss
* Needle Marks
* Change in personality
* Increased appetite for sweets
* Forgetfulness - poor concentration
* Borrowing money from co-workers or seeking an advance in pay or other unusual display of need for money
* Constant fatigue or hyperactivity
* Smell of alcohol
* Slurred speech
* Difficulty walking
* Excessive unexplained absences
* Dulled mental processes
* Slowed reaction rate
* **Supervisors or dispatchers must take action** if they have reason to believe one or more of the above listed conditions is indicated, and that the substance abuse is affecting a driver's job performance or behavior in any manner. A supervisor or dispatcher observing such conditions will take the following actions immediately:
* Confront the employee involved, and keep under direct observation until the situation is resolved.
* Secure the alcohol and drug program administrator's concurrence to observations; job performance and company policy violations must be specific.
* After discussing the circumstances with the supervisor or dispatcher, the alcohol and drug program administrator will arrange to observe or talk with the driver. If he/she believes, after observing or talking to the driver, that the conduct or performance problem could be due to substance abuse, the driver will immediately informed that continued refusal will result in disqualification/termination from performing any safety-sensitive function.
* Employees will be asked to release any evidence relation to the observation for further testing. Failure to comply may subject the employee to subsequent discipline or suspension from driving duties. All confiscated evidence will be receipted for with signatures for both the receiving supervisor, as well as the provider.
* If upon confrontation by the supervisor or dispatcher, the driver admits to use but requests assistance, the alcohol and drug program administrator will arrange for assessment by an appropriate substance abuse professional. Reassignment to the driver position is conditional to completing the substance abuse professional guidelines and return to work testing.
* The supervisor or dispatcher shall, within 24 hours or before the results of the controlled substance test are released, document the particular facts related to the behavior or performance problems, and present such documentation to the alcohol and drug program administrator.
* The drug and alcohol program administrator will remove or cause the removal of the driver from the vehicle and ensure the driver has safe transportation to an appropriate collection site and then to the drivers residence or appropriate lodging. Under no circumstances will the driver be allowed to continue to drive until a confirmed negative test is received.
* If during the course of employment, the driver acknowledges a substance abuse problem and requests assistance, the problem may be treated as if it were an illness, subject to the provisions set forth below:
* The decision to seek diagnosis and accept treatment for the substance abuse problem is the responsibility of the driver.
* The diagnosis and prescribed treatment of the driver's condition will be determined by health care professionals designated by the alcohol and drug program administrator in conjunction with the drivers physician; and
* The driver might be placed on medical lease for a predetermined period recommended by those medical professionals if the substance abuse professional determines that such action is appropriate.
1. **Post - Accident Testing:**  Currently, federal regulation place the burden of compliance with post-accident alcohol and drug testing regulations on the driver. Therefore, all drivers are required to provide a breath test and a urine specimen to be tested for the use of controlled substances "as soon as practical" after an accident. The driver shall remain readily available for such testing or may be deemed by the alcohol and drug program administrator to have refused to submit to testing. No alcohol may be consumed for 8 hours after the accident or until a test is conducted. If the driver is seriously injured and cannot provide a specimen at the time of the accident, he/she shall provide the necessary authorization for obtaining hospital reports and other documents that would indicate whether there were any controlled substances in his/her system.

An accident is defined by FMCSA regulations as an accident which results in the death of a human being, or bodily injury to a person who, as a result of the injury, immediately receives medical treatment from the scene of the accident; or which has had one of the vehicles towed from the scene of the accident. Except for a fatality accident, verification of the drivers responsibility in the above accident must be established by a citation to the driver.

Adherence by the drivers to post-accident specimen collection requirements is a condition of continued employment. The failure of an owner-operator to comply with DOT post-accident and specimen collection rules will be considered a breach of his/her contract with Wind Walker Express and the contract is invalid until appropriate substance abuse professional counseling has been completed.

1. **Random Testing:** Wind Walker Express will conduct random testing for all covered drivers as follows:
* A company wide selection process which removed discretion in selection from any supervisory personnel will be adopted by the company. This process will select covered drivers through the use of a computerized program.
* The random testing, once begun, will provide for alcohol testing of at least 25% and for drug testing of at least 50% of all covered drivers.
* The random testing will be reasonably spaced over any 12 month period.
* Once notified, a driver must proceed immediately to the assigned collection site.
1. The alcohol and drug program administrator will be responsible for designating the appropriate substance abuse professional who, in conjunction with the driver's physician, will diagnose the problem an recommend treatment.
* The driver's successful completion of the approved treatment program is a condition of continued employment as a driver.
* Following successful completion of any approved treatment program, the driver will be required to submit to at least six random drug tests in the first year, and follow-up testing may be conducted for up to 60 months. Failure to adhere to this condition is grounds for immediate termination.
* All supervisors or dispatchers will receive training to assist them in identifying alcohol and drug use by behavioral characteristics.
1. **Return to Duty Testing:**  Before a driver returns to duty requiring the performance of a safety-sensitive function after engaging in conducting prohibited by this policy and Part 382, Subpart B (FMCSR), the driver shall undergo a return to duty alcohol test with a result of less than 0.02 BAC or receive a confirmed negative result from a controlled substance urinalysis test.
2. **COLLECTION OF BREATH AND URINE SPECIMENTS AND LABORATORY ANALYSIS**
3. **Breath Alcohol Testing:**  Will be conducted either on site or at a prearranged location by a qualified Breath Alcohol Technician according to 49 CFR, Part 40 procedures. Refusal to complete and sign the testing form or refusal to provide breath will be considered a positive test, and the driver will be removed from a safety sensitive function until resolved.
4. **Specimen Collection:**  Specimen collection will be conducted in accordance with applicable state and federal law. The collection procedures will be designed to ensure the security and integrity of the specimen and provided by each driver, and those procedures will strictly follow federal chain-of-custody guidelines. Moreover, every reasonable effort will be make to maintain the dignity of each driver submitting a specimen or analysis in accordance with these procedures.
5. **Laboratory Analysis:** As required by FMCSA regulations, only a laboratory certified by the Department of Health and Human Services (DHHS) to perform urinalysis for the detection of the presence of controlled substances will be retained by Wind Walker Express. The laboratory will be required to maintain strict compliance with federally approved chain-of-custody procedures, quality control, maintenance and scientific analytical methodologies.
6. **CONSEQUENCES: APPEAL OF TEST RESULTS**
7. Alcohol and drug abuse may not threaten the safety and productivity of all employees at Wind Walker Express, but causes serious individual health consequences to those who use them. Appendix A outlines several personal consequences to those who use them. Any confirmed actions prohibited by part IV above, while performing a safety sensitive function or refusing to take a breath test, will be grounds for disqualification as a driver.
8. A driver testing positive for alcohol or drug use is subject to disqualification. Refusal to submit to testing will also be considered a positive.

Refusal may be defined as not providing a breath sample or urine as directed, neglecting to sign appropriate control forms, using alcohol within 8 hours of an accident, or engaging in conduct that clearly obstructs the testing process.

Any driver testing positive for the presence of a controlled substance will be contacted by the company's MRO. The driver will be allowed to explain and present medical documentation to explain any permissible use of a drug. All such discussions between the river and the MRO will be confidential. The company will not be part to, or have access to, matters discussed between the driver and the MRO. If medically supportable reasons exist to explain the positive result, the MRO will report the test result to the company as negative.

Within 72 hours after the driver has been notified of a positive test for drugs, he/she may request a retest of the split sample. This signed request will be provided to the MRO in writing, who will them initiate the new laboratory analysis. If a different result is detected by the subsequent laboratory, the test will be voided by the MRO, and the company alcohol and drug program administrator will be notified. A retest may be initiated as appropriate.

1. **CONFIDENTIALITY**

Under no circumstance, unless required or authorized by law, will alcohol or drug testing information or results for any employee or applicant be released without written request from the applicable employee.

Drivers are entitled, upon written request, to obtain copies of any records pertaining to the drivers use of alcohol or controlled substances, including any records pertaining to his or her alcohol or controlled substance test.

Collection of breath and urine samples must always be documented and sealed with a tamper proof sealing system in the presence of the driver, to ensure that all tests can be correctly traced to the driver.

Drug test analysis from the DHHS approved laboratory will be forwarded directly to the Medical Review Officer assigned by the alcohol and drug program administrator.

Alcohol test results will be forwarded by the MRO to the alcohol and drug program administrator for confidential record keeping.

**DRIVER NOTIFICATION LETTER**

I certify that I have received a copy of, and have read the above Wind Walker Express policy on alcohol and drug testing procedures. I understand that as a condition of employment as a driver I must comply with these guidelines, and do agree that I will remain medically qualified by following these procedures. If I develop a problem with alcohol or drug abuse during my employment with Wind Walker Express, I will seek assistance through the current alcohol and drug testing program administrator.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Sign Date

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Date