

FITNESS FOR DUTY

General Statement of Policy

- 1.0 That Fielder's Choice Enterprises, Inc. has a vital interest in maintaining a work environment that promotes the health, welfare, and safety of our employees and those with whom FCE employees are in contact. Employees are expected to be fit for duty at all times. Being under the influence of drugs or intoxicants poses unnecessary and unacceptable safety and health risks, not only to the user but to all those who work with him or her. FCE has enacted and will carry out reasonable measures it deems appropriate for ensuring a drug and alcohol free and safe workplace.

FCE's Fitness For Duty Policy and Practices are detailed below. In summary, FCE's policy with respect to the use or possession of drugs or intoxicants on FCE Property, and with respect to reporting for work under the influence of any intoxicant, is one of "zero tolerance." If an Employee violates this policy or if he or she is subjected to one of the testing procedures set forth in the policy and has a positive test result, or if an Employee refuses testing or inspections, as detailed in the policy, FCE will terminate the Employee. If an Employee believes that he or she cannot perform safely or effectively, the Employee should inform his or her supervisor. To encourage voluntary disclosure, Employees who give FCE notice in this fashion may be reassigned or placed on a leave of absence, rather than terminated, if FCE deems such action appropriate.

The possession, transfer, manufacture, dispensation, distribution, sale, or use of drugs on FCE Property is not tolerated. No FCE Employee, Subcontractor, or visitor shall report to work or to FCE Property under the influence of intoxicants. Any Employee violating this policy will be terminated or, in the case of others, denied access to FCE Property. In order to enforce this policy, all persons subject to the policy must take a Fitness For Duty Test upon request. Refusal to take the test will result in immediate termination for an Employee, and denial of access to FCE Property for all other persons. Positive results from a Fitness For Duty Test shall be grounds for termination of employment. Further, FCE reserves the right to perform inspections of persons, personal property, or vehicles located on FCE Property or jobsites in order to assure a drug-free, alcohol-free workplace.

All searches, inspections, and testing will be performed with appropriate concern for personal privacy, dignity, and confidentiality. The results of Fitness For Duty testing will be considered a confidential record disseminated on a need-to-know basis or as may be legally required or permitted. Fitness For Duty test records shall not be maintained in personnel files. The discovery of illegal substances, drugs, stolen property, and other illegal acts may result in notification of proper law enforcement agencies.

FCE reserves the right to amend this policy at its discretion or as necessary to comply with contract requirements or local, state, or federal laws, including but not limited to Department of Transportation requirements. FCE further reserves the right to change the testing limits and panel procedures as advances in technology or other considerations warrant identification of the named substances or additional substances in different concentration or through different screening techniques.

FCE recognizes that chemical dependency is a serious health problem and encourages all Employees to seek assistance for such problems prior to becoming subject to discipline under this policy or other FCE policies. Reasonable efforts will be made to provide any help requested by an Employee. Such requests will not excuse Employees from future compliance with FCE standards of conduct or performance. All supervisors and those charged with administering this policy will use every effort to maintain strict confidentiality.

FCE considers adherence to this policy to be essential and therefore a condition of employment.

1.1 Definitions

The following definitions pertain to the provisions of the Fitness For Duty Policy:

Applicant: For the purpose of this policy, any person requesting employment with FCE who has received a contingent offer of employment.

Benefits: Health, life, disability, leave, or other similar programs sponsored by FCE for the exclusive use of its employees.

FCE Property: Any property owned, rented, leased, or used by FCE business purposes including, but not limited to, construction sites, parking lots and vehicles, buildings, and undeveloped land.

Confirmatory Test Cutoff Limits: Level at which the presence of an intoxicant is verified in urine using the gas chromatography/mass spectrometry (GC/MS) technique or through an enzyme, evidential breath test, or blood test for alcohol. Levels are identified on the Acknowledgement and Consent Form.

Drug: Any intoxicant made illegal by any local, state or federal law.

Employees: Management/Staff employees and field construction personnel compensated by or on leave from FCE. This includes full time, part time, and temporary agency personnel.

Fitness For Duty Test: Urinalysis, evidential breath test or other test conducted by an independent laboratory selected by FCE. When permissible by law and necessary for program management, samples may be collected by trained, authorized FCE personnel. A positive result from a urinalysis means that an intoxicant was present at or above Confirmatory Test Cutoff Limits in urine; a negative result means that an intoxicant was not present at or above Confirmatory Test Cutoff Limits in urine. With respect to alcohol testing, when necessary, FCE may use breathalyzer, saliva enzyme or blood tests to detect or confirm the presence of alcohol with these tests administered by an independent facility or FCE personnel. Appropriate procedures have been established to maintain a strict chain of custody and to maintain confidentiality of all test results.

Incident: An occurrence involving one or more Employees, including, but not limited to the following:

- Altercations on or about FCE Property or jobsites.
- Accident on or about FCE Property or jobsites involving bodily injury to an Employee or bystander or damage to any property.
- Possession of any intoxicant on or about FCE Property or jobsites.
- Accident involving damage to any property, including, but not limited to, FCE vehicles and other equipment.
- Action or behavior which reasonably could have resulted in an accident or altercation.

Initial/Screening Test Cutoff Limits: Limits established for identifying the presence or absence of drugs in the urine. A positive result through this first test indicates the need for a confirmatory test.

Inspection: A Supervisor-conducted or FCE-sponsored inspection of premises, including persons, personal property, or vehicles located on or about FCE Property or jobsites, performed due to Reasonable Suspicion or an Incident, with reasonable regard given to the personal privacy and dignity of Employees.

Intoxicant: Includes, but is not limited to, alcohol, ethanol (ethyl alcohol), amphetamines, barbiturates, hypnotics, cocaine, narcotics (opiates such as heroin, morphine, codeine, and

methadone), PCP and other hallucinogens, marijuana and any other cannabinoid (e.g., hashish). The definition of Intoxicant also includes misused prescribed drugs and any other substance that adversely alters one's senses or affects one's ability to function in his/her job in a safe, productive manner. Intoxicants may include physician-prescribed or over-the-counter medication. Non-controlled substances (e.g., paints and glues) which are abused are also included in this definition.

Joint Venture: A partnership or corporation formed for a specific business purpose.

Management/Staff Employee: Any employee of FCE not on the field payroll system.

Medical Review Officer (MRO): A licensed physician with knowledge of substance abuse disorders who is responsible for reviewing and interpreting confirmed positive test results obtained through the FCE Fitness For Duty Testing Program. Prior to making a final decision to verify a positive test result for an individual, the MRO shall give the individual an opportunity to discuss the test results and provide medical documentation regarding any current treatment or prescribed drugs.

Random Drug Testing: A test, conducted at times selected by FCE, to include a specified percentage of the employee population following conditions established in this policy. Each random selection is drawn from a pool of the names of all Employees or from the list of FCE projects, including personnel previously tested.

Reasonable Suspicion: A rational determination based on abnormal or unusual behavior or other observations or circumstances sufficient to lead a reasonable person to suspect that the Employee is using an intoxicant, is under the influence of an intoxicant, or is in possession of an intoxicant.

Sensitive Job: Job in which (a) the Employee's duties necessitate interaction with co-workers and/or the public on a regular and routine basis, (b) the Employee's impairment could pose a threat to the safety of co-workers and/or the public, and (c) the Employee's job function creates situations where an act (or failure to act) is likely to cause injury to others or damage to property. Jobs within this category include but are not limited to:

- Crane or other equipment operators
- Drivers or delivery persons
- Flagmen, messengers, power-tool operators
- Powder actuated tool operators

Supervisor: Any Employee who is responsible for assuring that the duties of another employee are satisfactorily carried out.

Under the Influence: A state brought about the ingestion, inhalation, injection or absorption of one or more Intoxicants in such an amount that physical and/or mental control is noticeably diminished, and/or the employee's ability to work safely and effectively has been adversely affected by the Intoxicant(s), and/or Intoxicants were present at a level in violation of this policy or published limits.

1.2 Testing for Drugs and Alcohol

Applicants: All offers of employment are contingent upon an applicant receiving a negative result from a Fitness For Duty Test. Such test is voluntary but refusal to take the test will mean that the applicant has voluntarily withdrawn his/her application for employment. Should the test for an applicant who has not started work reveal intoxicants at or above the Confirmatory Limits, any offer of employment will be withdrawn. An Applicant who tests positive may be considered for employment after 180 days only with the approval of Human Resources, however, if such person is hired, then he or she shall be subjected to Regular Rehire Testing as deemed appropriate by

FCE at its discretion. An applicant will not be allowed to start work pending receipt of the test result.

Employees: Employees are required to take a Fitness For Duty Test under the circumstances outlined below and agree to do so. Employees will sign a Consent Form that will be maintained on file in the Human Resources Department (exhibit attached). If the form is not signed, an Employee must still take all requested testing, or be subject to termination.

- **Incident Testing:** All Employees involved in an incident will be asked to take a Fitness For Duty Test immediately following the Incident. If immediate testing is not possible, the test must be performed within 24 hours of the incident. Such test is voluntary, but failure to take the test will result in termination.
- **Sensitive Job Testing:** Employees in Sensitive Jobs may be asked to take a Fitness For Duty Test on a regular basis (at least every 6 months) at unannounced times and places. Such test is voluntary, but failure to take the test will result in termination. Employees in Sensitive Jobs will be identified and notified in writing prior to being required to submit to a Fitness For Duty Test.
- **Reasonable Suspicion Testing:** Any Employee whose behavior is such that there is a Reasonable Suspicion the Employee is using an intoxicant will be asked to submit to a Fitness For Duty Test. Such test is voluntary, but failure to take the test will result in termination.
- **Random Testing:** A percentage of the Employee population will be required to take a Fitness For Duty Test at unannounced times and places. The testing population will be identified through selection procedures used to assure equitable distribution in the selection process. Selection for Random Testing is independent of any other provision or selection criteria for any other testing (pre-employment, incident, sensitive job, or reasonable suspicion) under the Fitness For Duty program. Such test is voluntary, but failure to take the test will result in termination.
- **Periodic Site Testing:** The Employee population will be required to take a Fitness For Duty Test at unannounced times, places, and projects. Selection for Periodic Site Testing is independent of any other provision or selection criteria for any other testing (pre-employment, incident, sensitive job, or reasonable suspicion) under the Fitness For Duty program. Such test is voluntary, but failure to take the test will result in termination.
- **Regular Rehire Testing:** If an Employee is terminated for any violation of this policy and rehired in accordance with the terms of this policy, the Employee, upon being rehired, shall be subjected to all types of testing listed above and shall also be requested to submit to Fitness For Duty Testing from time to time as determined by FCE in its discretion, to ensure that the Employee remains intoxicant free.

Verification: All urinalysis tests which show a positive level of intoxicant in the initial screening will be confirmed by retesting of the specimen using a technique known as gas chromatography/mass spectrometry (GC/MS) or other verification technology. If the retest reveals levels of intoxicants beyond the Confirmatory Test Cutoff Limit (a positive result), the Applicant/Employee will be contacted by the MRO. An Applicant/Employee may rebut a positive test result with an additional test using the original specimen. The additional test must have been requested in writing within 24 hours (or the next business day) of the Applicant/Employee being notified by FCE of the positive result from the initial Fitness For Duty Test. The additional test must be at a laboratory approved by FCE, and the Applicant/Employee must pay all costs associated with the additional test. If the result of the retest is negative and if FCE is satisfied that the initial test was in error, FCE may accept the negative result, and reimburse the cost of the additional test for the applicant/employee. Other tests such as breathalyzer and blood tests may be subject to

verification based on technology and legal requirements. Refusal to submit includes adulteration of the urine sample by addition of any substance to the urine sample that is meant to mask or hide the presence of drugs or alcohol, failure to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for urine testing in accordance with the provisions of this part, failure to provide blood or breath for controlled substances or alcohol testing without a valid medical explanation after he or she has received notice of the requirement for blood or breath in accordance with the provisions of this part, engaging in conduct that clearly obstructs the testing process, and/or leaving the scene of an on the job accident.

Medication/Prescription Drugs/Physician's Care: After submitting to a Fitness For Duty Test, an Employee may voluntarily provide the Medical Review Officer with a documentation indicating that a positive result from the Fitness For Duty Test could have been caused by ingesting medication or prescription drugs as directed by his/her physician. If such evidence is presented to and accepted by the Medical Review Officer, a positive test result will not result in termination unless Intoxicant levels indicate dosages in an amount in excess of that prescribed.

1.3 Disciplinary Rules

Penalties for Certain Violations Other Than a Positive Fitness For Duty Test:

- Possession, use, sale, transfer, manufacture or distribution of a drug while on or about FCE Property or jobsites will result in immediate termination.
- Criminal conviction based upon (a) sale, transfer, distribution, or possession with the intent to distribute drugs or (b) manufacture of drugs, will result in immediate termination. If an Employee is convicted under any criminal drug statute for a violation, he/she must notify FCE within five (5) days of the conviction. If the Employee is working on a Federal Government project, FCE must notify the contracting agency within ten (10) days of receiving notice from the Employee of any such conviction. Failure of an Employee who is charged with any such crime may, in FCE's discretion, be subject to suspension, Fitness For Duty Testing, required counseling, or, in FCE's sole discretion, termination.
- Appearing for work at any location while Under the Influence of Intoxicants will result in immediate termination.
- Using a FCE vehicle during non-working hours, or for personal reasons, while being Under the Influence of Intoxicants shall be the basis for disciplinary action by FCE in its discretion, including counseling revocation of vehicle use, suspension or, if appropriate, termination.

Termination for Positive Test Result from a Fitness For Duty Test:

For a positive result from a Fitness For Duty Test by an Employee, the Employee will be terminated.

Rehire:

An Employee may apply for rehire after 180 days from termination, upon providing evidence, approved by the Director of Human Resources, satisfactory to FCE in its sole discretion, of the Employee's rehabilitation. The Individual, if rehired, shall be subject to Regular Rehire Fitness For Duty Testing for a period of up to three (3) years after returning to employment. Failure to agree to such testing shall subject the Employee to termination.

1.4 Company Sponsored Events

If alcohol is served at FCE-sponsored events, Employees attending such functions are required to comply with all applicable liquor and traffic control laws as well as FCE's standards of conduct.

FCE, Inc.

FITNESS FOR DUTY POLICY

Acknowledgement, Consent, and Agreement to Comply

I have been given a copy of the Fitness for Duty Policy of FCE, Inc. (the “Company”) and have had the opportunity to read the policy and ask questions. I have been warned by the Company that I should not be using drugs or misusing alcohol. I understand that the policy applies to me and my compliance with it is a condition of employment; the policy includes post-incident (positive results may eliminate or reduce workers’ compensation benefits), reasonable suspicion, random, sensitive job testing; and I may refuse such tests but refusal to take the tests subjects me to discipline, up to and including termination of employment and, or if I am an applicant, I may not be offered employment.

I understand that if I am subject to drug testing and choose to be tested, a sample of my urine will be collected by a trained collector at a site chosen by the Company; I must verify my identity and follow normal collection procedures; I may provide my specimen in private unless there is a reason to believe I am attempting to submit an adulterated, altered or substitute specimen; my specimen will be identified and sealed in my presence and sent to a Company-selected, certified laboratory to be analyzed for the presence of drugs in the specified concentrations unless I am physically unable to do so under which circumstances the Company may authorize the testing. If the evidence of drugs is detected in my specimen, the laboratory will forward the results to the medical review officer (MRO) retained by the Company and the MRO will make reasonable attempts to contact me and will consider any explanations or rebuttal I offer to explain my test results; the policy allows retests of the same specimen at my expense by a certified laboratory selected by me and approved by the Company if such request is received by the Company within 24 hours of notification to me of the positive result; if the retest fails to find evidence of drug use, the Company will rescind any discipline and will pay lost wages (except overtime); and the Company will give me a copy of my test results.

For alcohol testing, I must provide breath, saliva, and/or blood specimens to measure alcohol concentration either at the work site or at a clinic or laboratory; and if my alcohol test results in a concentration greater than the levels specified, the test will be deemed to be positive and I will be subject to disciplinary action as outlined in the policy. Applicants may not be offered employment.

Drug or Intoxicant	Initial/Screening Test Cutoff Limits	Confirmatory Test Cutoff Limits
Amphetamines (Bennies, speed, uppers, dexies, hearts, whites, crank)	1,000 ng/mL	500 ng/mL
Barbituates (reds, downers, yellow jackets, blue devils)	200 ng/mL	200 ng/mL
Benzodiazepines (Tranks, downers, blues, yellows)	200 ng/mL	200 ng/mL
Cannabinoids (Marijuana, pot, weed, grass, hash, joint, reefer)	20 ng/mL	10 ng/mL
Cocaine (Coke, crack, snow, crystal, nose candy, mother of pearl)	300 ng/mL	150 ng/mL
Methadone (Dolly)	300 ng/mL	300 ng/mL
Methaqualone (Ludes, sopors, quaaludes)	300 ng/mL	300 ng/mL
Opiates (M., Miss Emma, smack, gum dust, schoolboy, juice, percs)	300 ng/mL	300 ng/mL
Phencyclidine (PCP, angel dust, killer weed)	25 ng/mL	25 ng/mL
Propoxyphene (Darvon, Darvoset)	300 ng/mL	300 ng/mL
Alcohol (Hooch, booze)	.02 g/dL	.02 g/dL

FCE, Inc. reserves the right to change this panel.

I hereby acknowledge receipt of and consent to abide by this policy including testing for drugs and alcohol in the circumstances described in the policy. In the event that I am physically unable to consent to testing, by signing below I hereby consent to be tested as required.

Print Name _____ Social Security _____

Employee/Applicant Signature _____ Date _____

EMPLOYER COPY