



UNIVERSITY OF
NORTHERN COLORADO

Environmental Health and Safety

Alcohol and Drug Testing Procedure For CLD

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UNIVERSITY OF
NORTHERN COLORADO

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Alcohol and Drug Testing for Commercial Drivers

I. Purpose

This procedure has been developed so that the University of Northern Colorado (UNC) may meet the requirements of the Omnibus Transportation Employees Testing Act of 1991 and the supporting regulations in Title 49 of the Code of Federal Regulations (49 CFR) concerning alcohol and drug testing for employees who drive commercial motor vehicles (CMVs). Also, to meet requirements for CMV driver state and federal regulations that are required to be followed in the process of operation of a CMV.

II. Definitions

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol. (49 CFR 382.107)

Alcohol concentration (or content) means 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. (49 CFR 382.107)

Alcohol use – the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol. (49 CFR 382.107)

Commerce

1. Any trade, traffic or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State, including a place outside of the United States and
2. trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in paragraph (1) of this (49 CFR 382.107)

Commercial Motor Vehicle – any self-propelled or towed motor vehicle use on a highway in interstate commerce to transport passengers or property when the vehicle:

1. Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 10,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,001 pounds or more, whichever is greater; or
2. Is designed or used to transport more than 8 passengers (including the driver) for compensation; or

3. Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or
4. Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary un 49 CFR, subtitle B, Chapter I, subchapter C. [49 CFR 390.5]

Commercial motor vehicle requiring a commercial driver's license – a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:

1. Has a gross combination weight rating of 26,001 pounds or more inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
2. Has a gross vehicle rating of 26,001 or more pounds; 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 materials found to be hazardous for the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR 172.F, 49 CFR 382.107)

Confirmation Test

1. Alcohol testing means a second test, following a screening test with a result of 0.02 or greater, that provides quantitative data of alcohol concentration
2. For controlled substances testing means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test to ensure reliability and accuracy. [Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.] (49 CFR 382.107)

Consortium – an entity, including a group or association of employers or contractors, that provides alcohol or controlled substances testing as required and that acts on behalf of the employers. (49 CFR 382.107)

Controlled substances – marijuana, cocaine, opiates, amphetamines, and phencyclidine. (49 CFR 40.85)

DOT Agency – an agency (or “operating administration”) of the United States Department of Transportation administering regulations requiring alcohol and/or drug testing following 49 CFR 40. (49 CFR 382.107)

Driver – any person who operates a commercial motor vehicle. This includes but is not limited to:

1. full time, regularly employed drivers;
2. casual, intermittent or occasional drivers;
3. 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 pre-employment/pre-duty testing only, the term driver includes a person applying to an employer to drive a commercial motor vehicle. (49 CFR 382.107)

Driving Time – all time spent at the driving controls of a commercial motor vehicle. (49 CFR 395.2)

Drugs – the same as controlled substances above.

Employer – any person (including the United States, a State, District of Columbia, or a political subdivision of a State) who owns or leases a commercial motor vehicle or assigns persons to operate such a vehicle. The term employer includes an employer’s agents, officers, and representatives. (49 CFR 382.107)

Medical Review Officer (MRO) – a licensed physician (Medical Doctor or Doctor of Osteopathy); or a licensed or certified psychologist, social worker, or employee assistance professional; or an addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol & Other Drug Abuse) that is responsible for receiving laboratory results generated by an employer’s drug-testing program who has knowledge of substance abuse disorders and has the appropriate medical training to interpret and evaluate an individual’s confirmed positive test result together with his or her medical history and any other relevant biomedical information. The MRO is selected by the University. (49 CFR 40.3)

On Duty Time – all time from the time a driver begins to work or is required to be in readiness to work until he or she is relieved from work and all responsibility for performing work. (49 CFR 395.2). On duty time shall include:

1. All-time at a carrier 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 motor carrier;
2. All-time inspecting, servicing or conditioning any commercial motor vehicle at any time;
3. All driving time as defined in the term driving time above;
4. All-time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth;
5. All-time loading or unloading a commercial motor vehicle, supervising or assisting in the loading or unloading, attending a commercial motor vehicle being loaded or unloaded, remaining in readiness to operate the commercial motor vehicle, or in giving or receiving receipts for shipments loaded or unloaded;
6. All-time repairing, obtaining assistance, or remaining in attendance upon a disabled commercial motor vehicle;
7. All-time spent providing a breath sample or urine specimen, including travel time to and from the collection site, to comply with the random, reasonable suspicion, post-accident, or follow-up testing required by 49 CFR 382 when directed by a motor carrier; or
8. Performing any other work in the capacity, employ, or service of, a motor carrier; and
9. Performing any compensated work for a person who is not a motor carrier.

Performing a safety-sensitive function – a driver is considered to be performing a safety-sensitive function during any period in which he or she is performing, ready to perform, or immediately available to perform any safety-sensitive functions. (49 CFR 382.107)

Refuse to submit (to an alcohol or controlled substances test) – that a driver:

1. Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer. This includes the failure of an employee to appear for a test when called by a Consortium/Third-Party Administrator (C/TPA);
2. Failure to remain at a testing site until the testing process is complete. Provided, that an employee who leaves the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test;
3. In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the driver's provision of a specimen;
4. Fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing,
5. Fails 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, or
6. Fails or declines to take a second test the employer or collector has directed the driver to take;
7. Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER under 49 CFR 10.193 (d). In the case of a pre-employment drug test, the employee has deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment.
8. Engages in conduct that obstructs the testing; or
9. It is reported by the MRO as having a verified adulterated or substituted test result. (49 CFR 382.107)

Safety-sensitive function – any of those on-duty functions outlined in on-duty time job duties, paragraphs (1) through (6), above. (49 CFR 382.107)

Screening test (also known as initial test):

1. In alcohol testing, means an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in his or her breath or saliva specimen.
2. In controlled substance testing, means an immunoassay screen to eliminate “negative” urine specimens from further analysis or to identify a specimen that requires additional testing for the presence of drugs. (49 CFR 382.107)

Substance abuse professional – a licensed physician (Medical Doctor or Doctor of Osteopathy); or a licensed or certified psychologist, social worker, or employee assistance professional; or an addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol & Other Drug Abuse).

All must have knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substance-related disorders. This person evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and after-care. (49 CFR 40.3)

III. Application of this Procedure

This procedure covers all University personnel who are required to drive commercial motor vehicles as part of their job. (See definitions of 'driver', 'commercial motor vehicle', and other terms used in this document.)

IV. Drug and Alcohol Use and Testing

- A. Compliance with this procedure as a condition of employment for employees that are designated to be driving a CMV or may need to drive a CMV during employment

Compliance and participation in this procedure is a condition of employment or appointment as a volunteer in any position that requires a UNC employee, student employee, or volunteer to drive a commercial motor vehicle.

- B. Regulations Cited in this Procedure

The citations in parentheses or brackets after paragraphs in this procedure denotes the specific paragraph and section location of the information in Title 49 of the Code of Federal Regulations (49 CFR).

- C. Required Driver Conduct

ALCOHOL

1. No Driver shall:

- a. Use alcohol, as defined in 49 CFR 382.107, or be under the influence of alcohol, within 4 hours before going on duty or operating, or having physical control of, a commercial motor vehicle; or
- b. Use alcohol, be under the influence of alcohol, or have any measured alcohol concentration or detected presence of alcohol, while on duty, or operating, or in physical control of a commercial motor vehicle; or
- c. Be on duty or operate a commercial motor vehicle while the driver possesses wine of not less than one-half of one per centum of alcohol by volume, beer as defined in 26 U.S.C. 5052(a), of the Internal Revenue Code of 1954, or distilled spirits as defined in Section 5002(a)(8), of such code. However, this does not apply to possession of wine, beer, or distilled spirits which are:
 - i. Manifested and transported as part of a shipment; or
 - ii. Possessed or used by bus passengers. (49 CFR 392.5)

2. Concentration: 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. (49 CFR 382.201)

3. On Duty Use: No driver shall use alcohol while performing safety-sensitive functions. (49 CFR 382.205)

4. Pre-duty Use: No driver shall perform safety-sensitive functions within four hours after using alcohol. (49 CFR 382.207)
5. Use following an Accident: No driver required to take a post-accident alcohol test shall use alcohol for eight hours following the accident, or until he or she undergoes a post-accident alcohol test, whichever occurs first. (49 CFR 382.209)

CONTROLLED SUBSTANCES

1. Use: 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 physician who has advised the driver that the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle. The University/ employing department/supervisor may require a driver to inform them of any therapeutic drug use. (49 CFR 382.213)
2. Testing: No driver shall report for duty, remain on duty, or perform safety-sensitive function if the driver tests positive for controlled substances. (49 CFR 382.215)

REFUSAL TO SUBMIT TO A REQUIRED ALCOHOL OR CONTROLLED SUBSTANCES TEST

No driver shall refuse to submit to a required post-accident, random, reasonable suspicion, or follow-up alcohol or controlled substances test as described in Section IV. D. (below). (49 CFR 382.211). Refusal to submit to required testing shall result in termination of employment.

UNIVERSITY / EMPLOYING DEPARTMENT / SUPERVISOR RESPONSIBILITIES

If the University, Employing Department, or Supervisor has actual knowledge that a driver has participated in any of the prohibited activities in Section IV. C., they shall not permit the driver to drive a commercial motor vehicle or to perform other safety-sensitive functions. (49 CFR 382, 201, 205, 207, 213 and 215)

D. Required Tests

1. Pre-Employment Testing (Drivers requiring a CDL License)

A controlled substances test will be administered before the first time a driver performs safety-sensitive functions for the University. The driver shall not be allowed to perform safety-sensitive functions unless the driver has received a controlled substances test result from the medical review officer indicating a verified negative test result. [49 CFR 382.301 (a)]

Also, a prospective driver or driver transferee who has performed safety-sensitive functions for any other employer in the past two years is required to complete and sign a consent form authorizing such previous employers to release alcohol and drug testing

information to the University. The specific information to be released includes alcohol test results with a concentration of 0.04 or greater and verified positive drug test results.

The University does not need to administer a controlled substance test if the driver has participated in a suitable drug-testing program with a previous employer within the last 30 days and has a history of verified negative results. However, if the University learns from a previous employer that the prospective driver or driver transferee tested positive for drugs, had an alcohol test result of 0.04 or greater, or refused to be tested, he or she cannot perform safety-sensitive functions until the University has evidence that the driver met all return-to-duty requirements as well as receiving a verified negative result on a pre-employment controlled substances test. [49 CFR 382.301(c) and (d)]

2. Post-Accident Testing

Tests for alcohol and controlled substances will be administered as soon as practicable after an accident involving a commercial motor vehicle to each driver who was performing safety-sensitive functions concerning the vehicle if the accident involved the loss of human life or the driver receives a citation for a moving traffic violation arising from the accident. Testing is required for:

- a) Any human fatality;
- b) Citation to driver and immediate medical treatment away from the scene;
- c) Citation to driver and any vehicle in an accident that is towed.

A driver who is subject to post-accident testing must remain readily available for testing or be deemed to have refused to submit to testing. [49 CFR 382.303 (a)]

If a required alcohol test is not administered within two hours following the accident, the University/supervisor shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If the test is not administered within eight hours following the accident, the University/supervisor shall stop attempts to administer the test and maintain the same record. [49 CFR 382.303 (d)(1)]

If a required controlled substances test is not administered within 32 hours following the accident, the University/supervisor shall stop attempts to administer the test and prepare and maintain on file a record stating the reasons the test was not promptly administered. [49 CFR 382.303 (d)(2)]

The results of a breath or blood test for alcohol, or a urine test for the use of controlled substances, conducted by Federal, state or local officials will meet the requirements of the results of the tests are obtained by the University. [49 CFR 382.303 (g)(1) and (2)]

3. Random Testing

Tests of randomly selected CDL drivers for alcohol and/or controlled substances will be administered periodically. The University's random selection occurs early in each quarter of the calendar year and uses a scientifically valid basis that gives each driver an equal chance of being tested each time selections are done. [49 CFR 382.305 (i)]

A CMV driver shall only be tested for alcohol while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions. [49 CFR 382.305(m)]

The minimum annual percentage rate for random alcohol testing currently is 10 percent of the average number of driver positions. The minimum annual percentage rate for random controlled substances testing currently is 50 percent of the average number of driver positions. [49 CFR 382.305 (b)(1) and (2)]

Minimum annual percentage rates for testing may be adjusted each year by the Federal Highway Administration based upon actual test results for the prior year. The minimum annual percentage rate for alcohol testing may vary from 10% to 50%. The minimum annual percentage rate for controlled substances testing may vary from 25% to 50%. [See 49 CFR 382.305(b)(1) and (2) (c), (d), (e), (f), (g) and (h)]

Random alcohol and controlled substances tests are unannounced. Each CDL driver who is notified of random selection shall go to the test site as soon as possible. [49 CFR 382.305(k) and (l)]

4. Reasonable Suspicion Testing

Tests for alcohol and/or controlled substances are administered when there is reasonable suspicion to believe that a driver has violated the prohibitions in D. above concerning alcohol and/or controlled substances (except that for the possession of alcohol in D. 1. above). The determination that reasonable suspicion exists must be made by a UNC Police Officer based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. The observations may include indications of the chronic and withdrawal effects of controlled substances. [49 CFR 382.307 (a), (b) and (c)]

Alcohol testing may be done only if the observations above are made while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has stopped performing such functions. [49 CFR 382.307 (d)]

If a required alcohol test is not administered within two hours following the determination of reasonable suspicion, the University/employing department/supervisor shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If it is not administered within eight hours following the determination of reasonable suspicion, the University/employing department/supervisor shall stop attempts to administer an alcohol test and shall record the reasons for not administering the test. [49 CFR 382.307 (e) (1)]

Even in the absence of a reasonable suspicious alcohol test, no driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the driver is under the influence of or impaired by alcohol, as shown by the behavioral, speech and performance indicators of alcohol misuse. The University/ employing

department/supervisor cannot permit the driver to perform safety-sensitive functions until an alcohol test is administered and the driver's alcohol concentration measures less than 0.02, or twenty-four hours have elapsed following the determination that there is reasonable suspicion to believe that the driver has violated the prohibitions concerning the use of alcohol. [49 CFR 382.307 (e) (2) (i) and (ii)]

A written record is to be made of the observations leading to an alcohol and/or controlled substance reasonable suspicion test and signed by the supervisor or University official who made the observations, within 24 hours of the observed behavior or before the results of the test(s) are released, whichever is earlier. [49 CFR 382.307 (f)]

5. Return-to-Duty Testing

Tests for alcohol and/or controlled substances have to be administered before a driver can return to duty requiring the performance of a safety-sensitive function after the driver has engaged in conduct prohibited in C. above. The driver shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 and/or a return-to-duty controlled substances test with a verified negative result. [49 CFR 40 Subpart O]

6. Follow-up Testing

Follow-up tests have to be administered following a determination under F.5 below that a driver needs assistance to resolve problems associated with alcohol misuse and/or use of controlled substances. The Department of Environmental Health and Safety will ensure that the driver is subject to unannounced follow-up alcohol and/or controlled substances testing as directed by a substance abuse professional following F. 5. below [49 CFR 40 Subpart O].

E. Procedures for Testing

1. Notice

Before performing an alcohol or controlled substances test, the University/supervisor shall notify the driver that the test is required [49 CFR 382.113].

2. Testing Methods

Alcohol testing is conducted at Ergomed with an evidential breath-testing device operated by a certified breath alcohol technician.

Controlled substances testing is performed by analysis of a urine specimen at a certified laboratory. All specimens undergo an initial screen, followed by GC/MS confirmation of all positive screen results. Split urine samples are used so that a driver can request a second test if desired. All controlled substance test results are reviewed by a Medical Review Officer (MRO) before they are reported to the University. The MRO will contact the driver before reporting the results to the University if there are any questions. If the driver can't

be contacted within 72 hours, the MRO will contact the University and request they attempt to contact the driver. UNC will attempt to inform the driver to call the MRO within 72 hours. If the driver doesn't contact the MRO within three days, the driver is then reported as unfit for duty.

3. Compliance with test procedure

All alcohol and controlled substances testing will comply with the procedures in 49 CFR 40: "Procedures for Transportation Workplace Drug and Alcohol Testing Programs" [CFR 49 40.85].

4. Drug Testing

Drivers will be tested for marijuana, cocaine, opiates, amphetamines, and phencyclidine or as otherwise specified in the regulations [49 CFR 40.85].

Ergomed shall have a clear and well-documented procedure for collection, shipment, and accessioning of urine specimens; be sure at all times; use chain of custody procedures to maintain control and accountability of specimens, and have a quality assurance program which covers all aspects of the testing process [49 CFR 40 Subpart F].

An MRO shall review the interpret confirmed positive test results. In carrying out this responsibility, the MRO shall examine alternate medical explanations. Before making a final decision to verify a positive test result for a driver, the MRO shall allow the driver to discuss the test result. Such contact is confidential [49 CFR 40 Subpart G].

5. Alcohol Testing

Screening and confirmation tests shall use DOT-certified breath testing devices. The breath alcohol technician shall be trained to proficiency in the operation of the evidential breath testing device. To be used, an evidential breath testing device shall have a quality assurance plan developed by the manufacturer [49 CFR 40 Subpart J].

If the result of the screening test is an alcohol concentration of 0.02 or greater, a confirmation test shall be performed after a 20-minute wait [49CFR 40 Subpart L and M].

F. Consequences for Drivers Engaging in Substance Use-Related Conduct (All CMV Drivers)

1. Removal from safety-sensitive functions

A driver who has engaged in conduct prohibited in C. above is not permitted to perform safety-sensitive functions, including driving a commercial motor vehicle, except as provided in F.5. below [49 CFR 382.501 (a) and (b)].

2. Required evaluation and testing

A driver who has engaged in conduct prohibited in C. above must undergo evaluation by a substance abuse professional, pass return-to-work testing, and satisfy any other

requirements of F.5. below before again being permitted to perform safety-sensitive functions, including driving a commercial motor vehicle (49 CFR 382.503).

3. Other alcohol-related conduct

A driver tested under the provisions of D. above who is found to have an alcohol concentration between 0.02 and 0.039 is not permitted to perform or continue to perform safety-sensitive functions, including driving a commercial motor vehicle, for at least 24 hours following administration of the test (49 CFR 382.505).

4. Federal penalties

If a driver, a supervisor, or the University violates the requirements of F.1., 2. or 3. above, they are subject to the civil and/or criminal penalty provision of Title 49 United States Code 521 (b).

5. Referral, evaluation, and treatment

A driver who has engaged in conduct prohibited in C. above shall be advised by the University Employee Assistance Program of the resources available to the driver in evaluating and resolving problems associated with the misuse of alcohol and use of controlled substances, including the names, addresses and telephone numbers of substance abuse professionals and counseling and treatment programs. The driver shall be evaluated by a substance abuse professional (SAP) who shall determine what assistance if any, the driver needs in resolving problems associated with alcohol misuse and controlled substances use (49 CFR 40.281).

Before a driver returns to duty requiring the performance of safety-sensitive functions after engaging in conduct prohibited in C. above, the driver shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 if the conduct involved alcohol, or a controlled substances test with a verified negative result if conduct involved a controlled substance (49 CFR 40.305).

A driver identified as needing assistance in resolving problems associated with alcohol misuse or controlled substances use shall be:

- a. Evaluated by a substance abuse professional to determine that the driver has properly followed any rehabilitation program prescribed above
- b. Subject to unannounced follow-up alcohol and controlled substances tests administered by the employer following the driver's return to work in a safety-sensitive position. The number and frequency of such follow-up testing shall be as directed by the substance abuse professional and shall consist of at least six tests in the first 12 months following the driver's return to duty. The University/employing department/supervisor may direct the driver to undergo return-to-duty and follow-up testing for both alcohol and controlled substances, if the substance abuse professional determines that such testing is necessary for that particular driver (49 CFR 40.307(d)).

Follow-up testing shall not exceed 60 months from the date of the driver's return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first six tests have been administered if the substance abuse professional determines that such testing is no longer necessary (49 CFR 40.307(d)(2)).

6. Warnings and disciplinary actions

The University/employing department/supervisor may issue warning(s) to the driver and, if appropriate, recommend issuance of disciplinary action(s) for the driver, up to and including dismissal from employment.

7. Family Medical Leave Act (FMLA)

If the substance abuse professional determines in F.5. above that the assistance required by the driver includes treatment, the driver may be allowed to use benefits provided under the FMLA. Specific benefits under the FMLA differ based upon the type of appointment and other factors. Interested persons should contact the Human Resources Department for further information.

8. Americans with Disabilities Act (ADA)

After evaluation by the substance abuse professional in D.5. above, a driver may request that the employer make reasonable accommodations for the driver under ADA. It is the responsibility of the driver to show a condition that qualifies him/her under ADA. An active user is not protected under ADA, but the employer must accommodate if requested.

The employing department and the Office of Equal Opportunity and Diversity will review requests for accommodation to determine if the driver's condition qualifies under ADA. If the condition does qualify under ADA, the University/Office of Equal Opportunity and Diversity will then determine whether a reasonable accommodation can be made in a particular situation.

G. Handling of Test Results, Records Retention and Confidentiality

1. Retention of Records

The Environmental Health and Safety Department and Human Resource Department shall maintain records of its alcohol misuse and controlled substances use prevention program in a separate and secure location with controlled access. Records associated with alcohol test results indicating an alcohol content of 0.02 or greater, verified positive controlled substances test results, refusals to take required alcohol and/or controlled substances tests, calibration documentation, driver evaluations, and referrals and a copy of each annual calendar year summary will be maintained for a minimum of five years.

Records of negative and canceled controlled substances test results and alcohol test results with a concentration of less than 0.02 shall be maintained for a minimum of one year (49 CFR 382.401 (a) and (b)).

2. Reporting of Results

The Environmental Health and Safety Department and/or Human Resource Department shall prepare and maintain a summary of the results of its alcohol and controlled substances testing program performed during the previous calendar year when requested by the Secretary of Transportation, and DOT agency, or any State or local officials with regulatory authority over the University or any of its drivers (49 CFR 382.402 (a)).

3. Access to Records

The University will not release driver information that is contained in records required to be maintained in G.1. above, except as required by law or expressly authorized or required in G.2. above. A driver is entitled, upon written request to the Human Resource Department, to obtain copies of any records pertaining to the driver's use of alcohol or controlled substances, including any records pertaining to his/her alcohol or controlled substances tests. Records shall be made available to a subsequent employer only upon receipt of a written request from a driver. Disclosure to a subsequent employer is permitted only as expressly authorized by the terms of the driver's request (49 CFR 382.405 (a), (b) and (f)).

4. Medical review officer record retention for controlled substances

The medical review officer shall maintain all dated records and notifications, identified by individual, for a minimum of five years for verified positive controlled substances test results and a minimum of one year for negative and canceled controlled substances test results.

Except as required by law, no person may obtain the individual controlled substances test results retained by a medical review officer, and the medical review officer shall not release the individual controlled substances test results of any driver to any person, without first obtaining a specific, written authorization from the tested driver (49 CFR 382.409 (a), (b) and (c)).

5. University Notifications

The University shall notify a driver of the results of pre-employment-controlled substances to test if the driver requests such results within 60 calendar days of being notified of the disposition of the employment application. The Human Resources Department will notify a driver of the results of random, reasonable suspicion and post-accident tests for alcohol and controlled substances. If the controlled substances test results are verified positive, the driver shall also be informed of which controlled substance or substances were verified as positive (49 CFR 382.411 (a)).

6. Release of alcohol and controlled substances test information by previous employers

The University/supervisor may obtain, pursuant to a driver's written consent, any of the information concerning the driver which is maintained under 49 CFR 382.401 by the driver's previous employers (49 CFR 40.25).

The University/supervisor has to obtain, pursuant to a driver's consent, information on the driver's alcohol tests with concentration results of 0.04 or greater, positive controlled substances test results, and refusals to be tested, within the preceding two years, which are maintained by the driver's previous employers (49 CFR 40.25 (b)).

The information in the paragraph directly above must be obtained and reviewed by the University/supervisor no later than 30 calendar days after the first time a driver performs safety-sensitive functions for the University if it is not feasible to obtain the information before the driver performing safety-sensitive functions. The driver is not permitted to perform safety-sensitive functions after 30 days if the information is not obtained. The University/supervisor must still obtain the information even if the driver stops performing safety-sensitive function before the 30-calendar day period expires (49 CFR 40.25 (d)).

The University/supervisor must provide to each of the driver's employers within the two preceding years the driver's specific, written authorization for release of the information (49 CFR 40.25 (a) (e) (f)).

The University/supervisor cannot use a driver to perform safety-sensitive functions if the University/supervisor obtains information on the driver's alcohol test with a concentration of 0.04 or a, verified positive controlled substances test result, or refusal to be tested, by the driver, without obtaining information on a subsequent substance abuse professional evaluation and/or determination and compliance with return-to-duty testing (49 CFR 40.25 (5) (e)).

H. Driver Responsibilities

The responsibilities of a covered driver include:

1. Fully complying with the conduct required in C. above
2. Promptly reporting to the testing site and undergoing all required alcohol and/or controlled substances test
3. Providing adequate breath and/or urine samples for all required alcohol and/or controlled substances tests
4. Authorizing the release of alcohol and controlled substances testing results by previous employers (new driver hires and transfers only)
5. Signing a certification that he/she has received a copy of the procedure
6. Meeting all return-to-work requirements and stipulations after engaging in conduct prohibited in C. above.
7. Not performing any safety-sensitive functions after engaging in conduct prohibited in C. above until all return-to-work requirements have been met.
8. Demonstrating that his/her condition warrants consideration for leave under FMLA while undergoing prescribed treatments, and
9. Showing that his/her condition qualifies him/her for accommodation under the Americans with Disabilities Act (ADA).

I. Supervisor Responsibilities

The responsibilities of the supervisor of a covered driver include:

1. Notifying the driver to report to the test site for random, reasonable suspicion, post-accident, return-to-work or follow-up alcohol and/or controlled substances testing
2. Making appropriate observations when reasonable suspicion of alcohol abuse and/or controlled substances use seems evident
3. Documenting the observations leading to a reasonable suspicion of alcohol and/or controlled substances test for a driver
4. Documenting the reason why reasonable suspicion of alcohol and/or controlled substances test was not promptly administered to a driver
5. Documenting the reason why required post-accident alcohol and/or controlled substances test was not promptly administered to a driver
6. Making certain that a driver has met all return-to-work requirements and stipulations after engaging in conduct prohibited in C. above
7. Refusing to allow a driver to perform any safety-sensitive functions after engaging in conduct prohibited in above until the driver has met all return-to-work requirements and
8. Not misusing the supervisory responsibility.

J. Alcohol Misuse and Controlled Substances Use Information, Training, and Referral

1. University policy on the misuse of alcohol and use of controlled substances

The University / Environmental Health and Safety Department will provide educational materials that explain the requirements of 49 CFR 382 and the University's policies and procedures concerning meeting the requirements. Copies of these materials shall be distributed to each driver prior to the start of alcohol and controlled substances testing and to each driver subsequently hired or transferred into a position requiring driving a commercial motor vehicle (49 CFR 382.601(a)).

The materials made available to drivers will cover all the items called out in 49 CFR 382.601 (b). Included in the educational materials will be discussions of the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substances problem (the driver's or a coworker's); and available methods of intervening when an alcohol or controlled substances problem is suspected, including confrontation, referral to an employee assistance program, and/or referral to management.

Each driver is required to sign a statement certifying that he or she has received a copy of these materials. The University Environmental Health and Safety Department shall maintain the original of the signed certificate (49 CFR 382.601 (d)).

2. Training for supervisors

Supervisors of drivers are designated to determine whether reasonable suspicion exists to require a driver to undergo reasonable suspicion testing. Those supervisors shall receive at least 60 minutes of training on alcohol misuse and at least an additional 60 minutes of training on controlled substances use. The training shall cover the physical, behavior, speech and performance indicators of probable alcohol misuse and use of controlled substances (49 CFR 382.603).

K. Cost Responsibility

The employing University department pays all testing and processing costs except for the processing of the second part of a split urine sample processed at the request of a driver or driver applicant. The latter shall be paid for by the driver or driver applicant. All-time associated with testing will be paid work time except for driver applicants undergoing pre-employment testing and drivers doing return-to-work testing while in an unpaid status.

The driver is responsible for the cost of visits with a Substance Abuse Professional. The driver is also responsible for the cost associated with treatment or other courses of action recommended by the Substance Abuse Professional.

L. Organizational Responsibilities

1. Environmental Health and Safety

Responsible for the management and administration of this program at the University of Northern Colorado. These responsibilities include:

- a. Designation of the Regulatory Alcohol and Drug Testing Program manager as the person to provide information to and answer questions from covered drivers and supervisors;
- b. Preparation and updating of policies and procedures;
- c. Disclosure of educational and policy information to covered drivers;
- d. Collection of certifications from drivers for receipt of educational and policy information;
- e. University compliance;
- f. Training of supervisors;
- g. Developing, maintaining and updating required records containing basic information about covered drivers, controlled substances and alcohol tests and test results, and information provided by substance abuse professionals about specific drivers;
- h. Preparation and submittal of required reports;
- i. Communication with the departments employing covered drivers;
- j. Recovery of program operating costs from the departments employing covered drivers;
- k. Notification of supervisors about test requirements for their covered drivers; and

2. Human Resource Department

Program responsibilities include:

- a. Notifying the Environmental Health and Safety Department about each open position to be filled that requires a new hire or transfer to possess a commercial driver's license;
- b. Informing applicants for such positions that they will be subject to alcohol and controlled substances testing (including pre-employment-controlled substances testing) and will be required to authorize release of testing information by previous employers;
- c. Decision-making about a driver's request for leave under the Family Medical Leave Act to undergo treatment, including a review of the recommendation made by the driver's employing department.
- d. Overseeing positive drug and alcohol test follow-ups.
- e. Obtaining alcohol and controlled substance test results for new hire and transfer drivers from previous employers;

3. Disability and Support Services

Program responsibilities include:

- a. Evaluation of driver requests for accommodation under the Americans with Disabilities Act (ADA),
- b. Decision-making about whether or not the driver qualifies under the ADA, and
- c. When the driver does qualify under the ADA, coordination of efforts to determine whether a reasonable accommodation can be made for the driver.

4. Departments / Supervisors

Program responsibility consists of informing the Environmental Health and Safety Department about UNC drivers before they first report for duty as a driver and must not allow an employee to drive who has not been cleared by EHS and must follow all directions from EHS as to commercial motor vehicles and drivers.

M. Employee Self-Identification Program

Employees who self-identify and admit to the use of alcohol and/or controlled substances may be relieved of certain referral, evaluation, and treatment requirements in accordance with 49 CFR 382.121, which the University will follow. The self-identification and admission must be made to the employing department's supervisor or contact the Environmental Health and Safety Department. The program responsibilities include:

1. Employees who admit to alcohol misuse or controlled substances use are not subject to the referral, evaluation and treatment requirements of 49 CFR 382, provided that:
 - a. The admission is in accordance with this procedure,
 - b. The driver does not self-identify in order to avoid testing under the requirements of 49 CFR 382,

- c. The driver makes the admission of alcohol misuse or controlled substances use prior to performing a safety-sensitive function (i.e., prior to reporting to duty)
- d. The driver does not perform a safety-sensitive function until the University is satisfied that the employee has been evaluated and has completed education or treatment requirements in accordance with the self-identification program guidelines outlined below.

2. The University qualified voluntary self-identification program contains the following elements:

- a. It prohibits the University from taking adverse action against an employee making a voluntary admission of alcohol misuse or controlled substances use within the parameters of this program and paragraph (1) of this section,
- b. It allows the employee enough opportunity to seek evaluation, education or treatment to establish control over the employee's drug or alcohol problem,
- c. It permits the employee to return to safety-sensitive duties only upon successful completion of an educational or treatment program, as determined by a drug and alcohol abuse evaluation expert (i.e., employee assistance professional, substance abuse professional, or qualified drug and alcohol counselor),
- d. It ensures that:
 - Prior to the employee participating in a safety-sensitive function, the employee shall undergo a return to duty test with a result indicating an alcohol concentration of less than 0.02; and/or
 - Prior to the employee participating in a safety-sensitive function, the employee shall undergo a return to duty-controlled substance test with a verified negative test result for controlled substances use; and
 - It may incorporate employee monitoring and include non-DOT follow-up testing

V. Compliance with this Procedure

Compliance with this procedure is required. For assistance with this document, please contact Environmental Health and Safety (970) 351-1149, or visit

<https://www.unco.edu/facilities/services/environmental-health-and-safety/>