CDL Drug and Alcohol Testing Policy and Procedures

Introduction
This policy outlines the responsibilities of employees, supervisors and managers with regard to drug and alcohol testing of employees in safety-sensitive positions in accordance with U.S. Department of Transportation regulations, issued under the Omnibus Transportation Employee Testing Act of 1991.

Policy Statement
It is the policy of the University to comply fully with the regulations mandating pre-use, random, reasonable suspicion and post-accident drug and alcohol testing in accordance with regulations issued by the U.S. Department of Transportation. This policy applies to employees whose job requires them to obtain and retain a Commercial Drivers License (CDL) and operate a Commercial Motor Vehicle (CMV). Positions and employees covered by this Policy shall be referred to herein as “CDL positions” and “CDL employees” respectively.

This policy contains the requirements of the regulations, except where indicated that a particular provision is based on the authority of the University, as follows:

- The performance of safety-sensitive functions is prohibited by CDL employees having a breath alcohol concentration of 0.04 percent or greater as indicated by an alcohol breath test; by employees using alcohol or within four hours after using alcohol; and by employees in the possession of any medication containing alcohol unless the package seal is unbroken. In addition, the University prohibits the performance of any safety-sensitive function by an employee with a breath alcohol concentration of .02 percent or greater.
- Use of controlled substances by CDL employees covered by the Policy is prohibited and is in accordance with the regulations issued by the U.S. Department of Transportation.
- A CDL employee is performing a safety-sensitive function at the following times:
  - All time on University property, public property, or other property waiting to be dispatched to drive,
  - All time inspecting, servicing or conditioning any CMV at any time,
  - All CMV driving time,
  - All time other than driving time in or upon any CMV,
  - All time loading or unloading a vehicle, supervising or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving receipts for shipments loaded or unloaded,
  - All time spent performing driver requirements relating to accidents, and
  - All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Definitions
**Accident:** An accident is defined as an incident involving a commercial motor vehicle in which there is either a fatality, an injury treated away from the scene, or a vehicle being required to be towed from the scene.

**Breath Alcohol Technician (BAT):** A person who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device (EBT).

**Commercial Driver’s License (CDL):** A special license required of drivers who drive Commercial Motor Vehicles which meets the following criteria:
• Meets or exceeds 26,001 lbs. gross vehicle weight; or
• Transports 16 or more passengers, including the driver; or
• Transports hazardous materials as determined by the Hazardous Materials Act, 49 USC 5101, and are required to placard the vehicle under the Hazardous Materials Regulations, 49 CFR chapter I, subchapter C.

**Commercial Motor Vehicle (CMV):** Any self-propelled or towed vehicle used on a highway, any roadway or passage which may be available to public transportation at any time, whether on private or public property, in interstate or intrastate commerce to transport passengers or property when the vehicle:

• Has a gross vehicle weight rating or gross combination weight (including trailers) rating of 10,001 lbs. or more; or
• Is designed to transport 16 or more passengers, including the driver; or
• Is of any size and is used in the transportation of hazardous materials as determined by the Hazardous Materials Transportation Act, 49 USC 5101, and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR chapter I, subchapter C.

**Confirmation Test:** For alcohol testing, a second test, following a screening test with a result of 0.02 grams or greater of alcohol per 210 liters of breath, that provides quantitative data of alcohol concentration. For controlled substances testing, a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test in order to ensure reliability and accuracy.

**Designated Employer Representative (DER):** An employee authorized by Brown University to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the University, consistent with the requirements of 40.3. Service agents cannot act as DERs.

**Driver:** Any person who operates a commercial motor vehicle. For purposes of pre-employment testing, the term driver includes a person applying to drive a commercial motor vehicle.

**Evidential Breath Testing device (EBT):** A device approved by the National Highway Traffic Safety Administration ("NHTSA") for the evidential testing of breath at the 0.02 and 0.04 alcohol concentrations, placed on NHTSA’s “Conforming Products List of Evidential Breath Measurement Devices” ("CPL"), and identified on the CPL as conforming with the model specifications available from NHTSA’s Traffic Safety Program.

**Medical Review Officer (MRO):** A licensed physician responsible for receiving and reviewing laboratory results generated by the Universities drug testing and for evaluating medical explanations for certain drug test results.

**Performing a Safety-Sensitive Function:** Any period in which the driver is actually performing, ready to perform, or immediately able to perform any safety-sensitive functions.

**Safety-Sensitive Function:** Any of the seven on-duty functions set forth in 395.2, On-duty time, listed below:

• All time at a carrier or shipper plant, terminal, facility, or other property, waiting to be dispatch, unless the driver has been relieved from duty by the employer.
• All time inspecting equipment as required by the Federal Motor Carrier Safety Regulations, or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time.
• All time spent at the driving controls of a commercial motor vehicle.
• All time, other than driving time, spent on or in a commercial motor vehicle.
• All time loading or unloading a commercial motor 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 spent performing the driver requirements associated with an accident.
• All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Screening test:

• In alcohol testing it means an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in his or her system.
• In controlled substance testing it means an immunoassay screen to eliminate negative urine specimens from further consideration.

Substance Abuse Professional (SAP): A person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning evaluation, treatment, follow-up testing, and after-care.

Responsibilities

Environmental Health & Safety: Environmental Health & Safety is responsible for the following Drug and Alcohol Screening compliance activities:

• Ensure each employee required to have a CDL participates in an appropriate drug and alcohol testing program in accordance with DOT regulations. All results will be kept and maintained on file by Environmental Health & Safety pursuant to University policy.
• Review all driver qualification forms and documents for completeness and compliance.
• Maintain Driver Qualification files includes mandatory drug testing information (for drivers operating a vehicle with a GVWR of 26,001 lbs. or more’ a vehicle requiring a placarding for hazardous materials; or a vehicle designed to transport 16 or more passengers including the driver)

Supervisor/Department: The duties of the driver’s supervisor or his/her department include:

• Active participation in the hiring process for employees who drive CMVs, which includes:
  ◦ Ensuring all offers of employment shall be contingent upon successful conformation of prior employment, driving record, completion of physical, drug and alcohol testing, and other DOT requirements for drivers.
  ◦ Ensuring the post-offer applicant obtains his/her physical, road test, and CDL drug and alcohol testing.
• Informing and requiring CDL drivers to submit a urine sample for drug/alcohol testing at the designated medical and/or collection facility when the supervisor suspects that the driver is under the influence of drugs or alcohol, pursuant to DOT regulations and University policy, and
  ◦ Contact Human Resources as soon as possible following the incident, and
  ◦ Complete the Supervisors Reasonable Suspicion Form.
• Compliance with DOT regulations

Driver: The responsibilities of a driver include:

• Avoid the use of non-prescribed drugs and alcohol while conducting safety-sensitive activities, and to comply at all times with University policy.
• Submit a sample for drug or alcohol testing when called upon to do so by his/her supervisor, including random testing for CDL drivers, pursuant to University policy (see “Refusal to Submit Form”).

Procedures

Types of Tests: To the extent practicable, all tests will be conducted during employees’ normally scheduled work hours. All testing required by this policy will be conducted in accordance with the Omnibus Transportation Employee Testing Act of 1991 and drug testing guidelines and regulations issued by the Department of Transportation. The following tests are required:

• **Pre-employment (Pre-use).** All applicants for employment in CDL positions, or candidates for transfer or promotion to such positions (pre-use) are subject to screening for improper use of alcohol or controlled substances.

• **Post-Accident.** Conducted after accidents on CDL employees in University vehicles whose performance could have contributed to the accident, as determined by a citation for a moving traffic violation, and for all fatal accidents even if the driver is not cited for a moving traffic violation.
  - Alcohol tests should be conducted within 2 hours, but in no case more than 8 hours, after the accident.
  - CDL employees must refrain from all alcohol use until the test is complete.
  - Post-accident drug tests must be conducted within 32 hours.

• **Reasonable Suspicion.** Conducted when a trained supervisor or manager observes behavior or appearance that is characteristic of alcohol or illicit drug misuse.
  - If a CDL employee’s behavior or appearance suggests alcohol or drug misuse, a reasonable suspicion test must be conducted.
  - If a test cannot be administered, the driver must be removed from performing safety-sensitive duties for at least 24 hours.
  - Testing for alcohol abuse must be based upon suspicion which arises just before, during or just after the time when the employee is performing safety-sensitive duties.
  - Testing for substance abuse may occur at any time upon suspicion.
  - Reasonable suspicion testing may only be conducted after consultation with the Vice President for Facilities Management or his/her designee.

• **Random:** Conducted on a random, unannounced basis just before, during or after performance of safety-sensitive functions for alcohol or at any time for drugs.
  - Each year, the number of random alcohol tests conducted by the University must equal at least 25% of all the safety-sensitive CDL employees.
  - Random drug tests conducted by the University must equal at least 50% of all CDL employees.

• **Return to Duty and Follow-up.** Conducted when an individual who has violated the prohibited alcohol or drug standards returns to performing safety-sensitive duties.
  - Follow-up tests are unannounced and at least six (6) tests must be conducted in the first twelve (12) months after a driver returns to duty.
  - Follow-up testing may be extended for up to sixty (60) months following the return to duty.

Conducting Tests

• **Alcohol:** DOT rules require breath testing using evidential breath testing (EBT) devices.
  - Two breath tests are required to determine if a person has a prohibited alcohol concentration.
  - A screening test is conducted first. Any result less than 0.02 alcohol concentration is considered a “negative” test. If the alcohol concentration is 0.02 or greater, a second,
confirmation test must be conducted

- **Drugs:** Drug testing is conducted by analyzing a driver's urine specimen, and must be conducted through a U.S. Department of Health and Human Services certified facility.
  - Specimen collection procedures and chain of custody requirements ensure that the specimen's security, proper identification and integrity are not compromised.
  - DOT rules require a split specimen procedure.
    - Each urine specimen is subdivided into two bottles labeled as primary and split.
    - Both bottles are sent to the laboratory.
    - Only the primary specimen is opened and used for the urinalysis.
    - The split specimen remains sealed at the laboratory.
    - If the analysis of the primary specimen confirms the presence of illegal controlled substances, the driver has 72 hours to request that the split specimen be sent to another DHHS certified laboratory for analysis.
  - All urine specimens are currently analyzed for the following drugs:
    - Marijuana (THC metabolite)
    - Cocaine
    - Amphetamines
    - Opiates (including heroin), and
    - Phencyclidine (PCP)
  - Testing is conducted using a two-stage process.
    - First, a screening test is performed.
    - If the test is positive for one or more of the drugs, a confirmation test is performed for each identified drug.
    - Sophisticated testing requirements ensure that over-the-counter medications or preparations are not reported as positive results.
  - All drug tests are reviewed and interpreted by a physician designated as a Medical Review Officer (MRO) before they are reported to the University.
    - If the laboratory reports a positive result to the MRO, the MRO will contact the driver and conduct an interview to determine if there is an alternative medical explanation for the drugs found in the urine specimen.
    - For all the drugs listed above, except PCP, there are some limited, legitimate medical uses that may explain a positive test result. The MRO will take into consideration 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.
    - If the MRO determines that the drug use is legitimate, the test will be reported to the Designated Employer Representative, the Direct of HR Services, as a negative result.

**Refusal to Submit to an Alcohol or Drug Test and the Consequences**

- Refusal to submit to an alcohol or controlled substances test means that a CDL employee:
  - 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 in accordance with the provisions of this policy,
  - 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 in accordance with the provisions of this policy,
  - Refuses to wash his or her hands after being directed to do so during collection of a urine sample,
  - Admits to the collector of a urine sample that he or she has adulterated or substituted their specimen,
  - An observed collection of a urine sample, fails to follow the observer's instructions to
raise his or her clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if he or she has any type of prosthetic or other device that could be used to interfere with the collection process,
- Possesses or wears a prosthetic or other device that could be used to interfere with the collection process, or
- Behaves in a confrontational way that disrupts the collection process or otherwise engages in conduct that clearly obstructs the testing process.

- CDL employees who refuse to submit to an alcohol or drug test are not allowed to perform safety-sensitive functions. Pursuant to the University's authority, CDL employees who refuse to submit to a test will be subject to discipline, up to and including discharge.

Consequences of Alcohol/Drug Misuse

- CDL employees who have any alcohol concentration, defined as 0.02 or greater, who are tested just before, during or just after performing safety-sensitive functions must be removed from performing such duties for a minimum 24 hours.
  - Disciplinary action may be imposed upon an employee whose alcohol test reveals any alcohol concentration, between 0.02 and 0.04.
- CDL employees who engage in prohibited alcohol or drug conduct, CDL employees who test positive for alcohol use greater than 0.04 or drug use, must be immediately removed from safety-sensitive functions for a period of time determined by the University at its' sole discretion.
  - Disciplinary action, up to and including termination, may be imposed upon a CDL employee who engages in prohibited alcohol or drug conduct, CDL employees who test positive for alcohol use greater than 0.04 or drug use.
- Unless the circumstances warrant more serious discipline, the first time a CDL employee tests positive for alcohol use greater than 0.04 or drug use, he/she shall receive a one (1) day unpaid suspension.
- If a CDL employee tests positive for alcohol use greater than 0.04 or drug use for a second time within the five year period immediately following his/her first positive test, he/she will be terminated.
- A CDL employee in his/her probationary period who tests positive for any alcohol concentration (defined as 0.02 or greater) or drug use, shall be terminated.
- A CDL employee who tests positive for alcohol use greater than 0.04 or drug use, but is not terminated must be evaluated by a substance abuse professional and comply with any treatment recommendations to assist them with his/her alcohol or drug problem.
  - The payment for any recommended treatment will be strictly at the expense of the employee (or his/her health insurance program, if applicable).
  - Employees may be placed on sick leave or leave without pay status during the treatment period, whichever is appropriate.
- CDL employees who have been evaluated by a substance abuse professional, who comply with any recommended treatment, who have taken a return to duty test with a result less than 0.02, and who are then subject to unannounced follow-up tests at the employees' expense, may return to work.
- Once an employee successfully completes rehabilitation, he/she shall be returned to his/her regular duty assignment or an equivalent position. Employee assignments during treatment shall be based on each individual's circumstances. As a condition of employment, the employee must comply with prescribed follow-up care.

Information/Training

- All current and new employees will receive written information about the testing requirements and how and where they may receive assistance for alcohol or drug misuse.
- All employees must receive a copy of this policy and sign the Confirmation of Receipt – see
• All personnel responsible for supervising and managing CDL employees must attend at least two hours of training on alcohol and drug misuse symptoms and indicators used in making determinations for reasonable suspicion testing.
  ○ Supervisors and managers will be instructed on the detection of abuse problems and the enforcement of the testing policy. Periodic, on-going training will also occur after implementation of the policy.
• This policy will be posted on employee bulletin boards and will be available to all employees.
• Educational information will be made available periodically which will focus on the potentially dangerous effects of drug and alcohol use and abuse, the procedures associated with pre-employment drug screening and “reasonable suspicion” testing, the effects on job performance measured in loss of productivity, and the potential safety hazards presented to the individual employee, other employees and the public.
• All recruitment advertising will include the statement "Drug/alcohol screening is a condition of employment" at the bottom of the advertisement/posting with the EEO statement.
• All final candidates for employment will be given a copy of this policy, and be given the opportunity to read the policy in its entirety.

Record Keeping

• The University is required to keep detailed records of its alcohol and drug misuse prevention program.
• Alcohol and drug testing records are confidential. Test results and other confidential information may only be released to the employer, the substance abuse professional, the MRO, and any arbitrator of a grievance filed in accordance with any applicable collective bargaining agreement. Any other release of this information may only be made with the driver's consent, or in response to a court order.

Pre-employment References

• The University must obtain and review the following information from each employer that the prospective driver worked for, in a safety-sensitive position, during the previous two years:
  ○ Information about a test in which the employee's blood alcohol was 0.04 or greater,
  ○ Information about a positive drug test, and
  ○ Information about any refusal to participate in the alcohol and drug testing program.
• The prospective employee must provide the former employer with a written release allowing the release of this information or he/she will not be hired.
  ○ If the previous employer indicates that a positive result was received, or that the employee refused to participate when selected for an alcohol or drug test, the applicant may not be hired unless:
    ▪ He/she has already consulted with a substance abuse professional,
    ▪ Already received recommended treatment, and
    ▪ Subsequently tested negative in a return to duty test for the former employer.
• The University must provide the same information to subsequent employers of current University employees when provided with a written release.
Frequently Asked Questions
Questions about this policy should be referred to the University's Human Resources Department.

Related Policies
- Commercial Motor Vehicle Policy
- safeDRIVE Policy

Policy Owner
Approved by Director, Insurance & Purchasing Services and Director of Labor & Employee Relations

Contact(s)
Matthew Force
Fleet & Equipment Safety Manager
Environmental Health & Safety
Matthew_Force@brown.edu
401-863-2751

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