

CHAPTER: 400

Physical Plant/Facilities

DEPARTMENT ORDER:

**408 – Commercial Driver’s License and
Alcohol Testing**

**OFFICE OF PRIMARY
RESPONSIBILITY:**

**AS
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Arizona Department of Corrections

Department Order Manual



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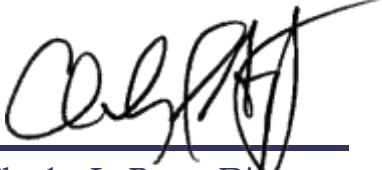
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PURPOSE

This Department Order implements the Department's Commercial Driver's License (CDL) Drug and Alcohol Testing Program which facilitates the drug and alcohol testing of employees required to possess CDLs to perform safety-sensitive functions (CDL drivers) in accordance with the Federal Highway Administration's Drug Use and Alcohol Rules. This Testing Program is administered by the Human Services Bureau to prevent accidents and injuries resulting from misuse of alcohol or drugs and to protect the safety of Department employees and the public it serves.

APPLICABILITY

This Department Order is applicable to CDL drivers. The Federal Motor Carrier Safety Administration (FMCSA) Regulations, 49 Code of Federal Regulations (CFR) Part 382 and Part 40 authorize the Department's CDL Drug and Alcohol Testing Program. If any conflict exists between this Department Order and federal and/or state law, the federal and/or state law shall take precedence. Copies of applicable federal rules are located at <http://www.fmcsa.dot.gov>.

PROCEDURES

1.0 CONDUCT

- 1.1 Alcohol Usage and Possession – CDL drivers shall not:
 - 1.1.1 Report for duty or remain on duty to perform safety-sensitive functions while having a breath alcohol concentration of 0.04 or greater on an alcohol test.
 - 1.1.2 Be on duty or operate a commercial motor vehicle (CMV) while in possession of alcohol.
 - 1.1.3 Use alcohol while performing safety-sensitive functions.
 - 1.1.4 Report to duty within four hours after consuming alcohol.
 - 1.1.5 Use alcohol within eight hours following an accident or prior to undergoing a post-accident alcohol test, whichever comes first.
- 1.2 Use of Controlled Substances – When using controlled substances, CDL drivers shall not report for duty or remain on duty when required to perform safety-sensitive functions, except when advised by a physician that the controlled substances will not adversely affect their ability to safely operate a CMV.
 - 1.2.1 CDL drivers shall inform their supervisor immediately about controlled substances that may impair their ability to perform their assigned duties.
- 1.3 Drug Testing – CDL drivers shall not report for duty, remain on duty or perform a safety-sensitive function if they have a positive drug test result.
- 1.4 Refusal to Test – CDL drivers shall not refuse to submit to a drug or alcohol test required for post-accident, random, reasonable suspicion or follow-up testing as defined in the Glossary of Terms. CDL drivers shall:

- 1.4.1 Be fit to report for duty and not under the influence of alcohol and/or controlled substances.
- 1.4.2 Decline without penalty to perform outside of their normal working hours if under the influence of alcohol and/or controlled substances.
- 1.4.3 Submit to drug and alcohol testing when required.
- 1.4.4 Notify their supervisor immediately if:
 - 1.4.4.1 Their driver's license is suspended, revoked, or canceled by a state.
 - 1.4.4.2 They lose the privilege to drive a CMV.
 - 1.4.4.3 They are disqualified from driving a CMV for any period.
- 1.4.5 Attend the Department-approved Training (orientation) for CDL Drivers and receive CDL Drug and Alcohol Program Testing Program Awareness Training material for safety-sensitive function driver positions.

2.0 SELF-IDENTIFICATION

- 2.1 CDL drivers who voluntarily self-identify to management they may be impaired because of drug or alcohol use shall not be subject to disciplinary action.
 - 2.1.1 Self-identification shall be voluntary and made before:
 - 2.1.1.1 The occurrence of an accident.
 - 2.1.1.2 CDL drivers have been notified to report for any Department directed testing.
 - 2.1.2 Self-identifying CDL drivers shall be:
 - 2.1.2.1 Referred for evaluation and counseling.
 - 2.1.2.2 Removed from performing safety-sensitive functions until released by a Substance Abuse Professional.
 - 2.1.3 After return to duty, CDL drivers may be subject to return-to-duty and follow-up testing as outlined in section 4.0 of this Department Order.
 - 2.1.4 If after self-identification, CDL drivers who are selected for required testing during the time they are under counseling shall still report for required tests and shall be subject to Department actions for positive drug and alcohol test results.
- 2.2 CDL drivers involved in an approved and certified rehabilitation program may be placed in a non-safety sensitive position by the Department, if appropriate and available.
 - 2.2.1 If a non-safety sensitive position is not available, CDL drivers may request leave (sick, annual, leave without pay or any combination) until completion of an approved and certified rehabilitation program.

2.2.2 After rehabilitation, CDL drivers shall:

2.2.2.1 Be evaluated by a Substance Abuse Professional.

2.2.2.2 Undergo and pass a return-to-duty test with a breath alcohol concentration of less than 0.02 on an alcohol test and a verified negative drug test result.

2.2.2.3 Be subject to unannounced follow-up testing as outlined in Section 4.0 of this Department Order.

2.3 Cost of Testing and Counseling

2.3.1 The Department shall pay for administering all initial CDL driver drug and alcohol tests.

2.3.2 The Department may pay for voluntary counseling sessions as outlined in Department Order #521, Employee Assistance Program.

2.3.3 The Department shall not pay for approved and certified rehabilitation programs required for CDL drivers to remain on duty.

2.3.3.1 CDL drivers shall have the responsibility to seek and arrange payment for any required approved and certified rehabilitation programs.

3.0 ACTIONS

3.1 Disciplinary action shall be taken on a case-by-case basis in accordance with Arizona Revised Statute (A.R.S.) §41-773 and Department Order #601, Administrative Investigations and Employee Discipline.

3.2 The Department shall take reasonable precautions to protect the safety of its employees and the general public during its operations. Any positive drug or alcohol test result or action that interferes with the test shall result in removal of a CDL driver's authorization to perform safety-sensitive functions and disciplinary actions may be taken.

3.3 Pre-employment/post-offer candidates failing a drug or alcohol test shall be excluded from all CDL driving positions for up to 12 months from the date of the test.

4.0 DRUG AND ALCOHOL TESTING - Testing to identify drug and alcohol abuse by a CDL driver is the basis of the department's CDL Drug and Alcohol Testing Program. Testing under this Program does not infer the Department believes a CDL driver is a drug addict or an alcoholic. It is conducted to determine if a CDL driver should be removed from performing safety-sensitive functions until an appropriate course of action can be taken consistent with this Department Order and Federal Rules.

4.1 Prior to performing any drug and/or alcohol testing as outlined in this section, every CDL driver shall be notified the testing is being conducted pursuant to 49 CFR Part 382 and Part 40. The Department shall test for the classes of drugs as outlined in Department Order #522, Drug-Free Workplace.

- 4.2 The Department's CDL Drug and Alcohol Testing Program shall include:
 - 4.2.1 Pre-employment/Post-offer Testing
 - 4.2.1.1 Pre-employment/post-offer testing shall be conducted:
 - 4.2.1.1.1 Before a prospective employee is hired or an employee is promoted or transferred into a position requiring a CDL.
 - 4.2.1.1.2 After a conditional offer of employment is made.
 - 4.2.1.2 Arrangements for pre-employment/post-offer testing scheduling shall be made by the Hiring Authority.
 - 4.2.1.3 A breath alcohol concentration of less than 0.02 on an alcohol test and a negative drug test result shall be required prior to performing safety-sensitive functions.
 - 4.2.1.4 Refusing to submit or the failure to pass shall automatically disqualify pre-employment/post-offer candidates from being placed in the position.
 - 4.2.2 Random CDL Drug and Alcohol Testing - CDL drivers shall be subject to drug and alcohol testing on an unannounced and random basis in accordance with United States Department of Transportation (USDOT) regulations.
 - 4.2.2.1 In accordance with this Department Order and Department Order #522, Drug-Free Workplace, the Department shall annually conduct a number of CDL random drug tests equal to at least 50% of the eligible CDL drivers and a number of CDL random alcohol tests for misuse of alcohol equal to at least 25% of the eligible CDL drivers. CDL random drug and alcohol testing shall be spread reasonably over a 12-month period utilizing an accepted random selection method to identify participants.
 - 4.2.2.2 CDL drivers shall be:
 - 4.2.2.2.1 In the CDL random drug and alcohol test selection pool at all times, regardless of previous selection.
 - 4.2.2.2.2 Selected using a scientifically valid method to ensure randomness.
 - 4.2.2.2.3 Notified of their selection for testing at the time they report for duty or at any time while on duty on the collection day. CDL drivers shall report immediately to the designated contracted collection site/laboratory.
 - 4.2.3 Reasonable Suspicion Testing - Reasonable suspicion testing is designed to identify potential drug and alcohol-affected CDL drivers who, while on duty, may pose a danger to themselves, their co-workers or the general public.

- 4.2.3.1 A trained supervisor or other Departmental official trained in detection of the possible symptoms of alcohol misuse and drug abuse shall make a decision whether there is reasonable suspicion to believe a CDL driver is using or has used a prohibited substance or is misusing alcohol. If available, a second supervisor shall agree reasonable suspicion testing is warranted.
 - 4.2.3.1.1 The belief shall be based on observations of specific, currently occurring physical, behavioral, or performance indicators of probable drug use or alcohol abuse.
 - 4.2.3.1.2 The decision to test shall be based on a reasonable and articulable belief that CDL drivers are using or have used a prohibited drug or alcohol.
 - 4.2.3.1.3 Completion of the Department's CDL Drug and Alcohol Testing Program Awareness Training is sufficient to satisfy the training requirement.
- 4.2.3.2 If CDL drivers have not been tested for alcohol within two hours of the observation, the supervisor shall document in writing the reason a test was not administered.
- 4.2.3.3 If CDL drivers have not been tested for alcohol within eight hours, the supervisor shall cease efforts to administer the test and document why a test was not administered.
- 4.2.3.4 Reasonable suspicion alcohol testing shall be conducted just before, during, or just after performing safety-sensitive functions.
- 4.2.4 Post-Accident Testing
 - 4.2.4.1 Post-accident drug and/or alcohol testing shall be completed after a vehicle accident when:
 - 4.2.4.1.1 There has been a fatality.
 - 4.2.4.1.2 CDL drivers are cited for a moving traffic violation arising from the accident.
 - 4.2.4.1.3 Accidents involve bodily injury to any person who receives medical treatment away from the scene of the accident.
 - 4.2.4.1.4 One or more of the vehicles incurred disabling damage and was towed away from the accident.
 - 4.2.4.2 Post-accident drug testing shall occur within 32 hours of the occurrence.
 - 4.2.4.2.1 If CDL drivers have not had a post-accident drug test within 32 hours of the accident, the supervisor shall cease efforts to administer the test and document why a test was not administered.

- 4.2.4.3 Post-accident alcohol testing shall occur within eight hours of the occurrence.
 - 4.2.4.3.1 If CDL drivers have not had a post-accident alcohol test within two hours of the accident, the supervisor shall document in writing the reason a test was not administered.
 - 4.2.4.3.2 If CDL drivers have not had a post-accident alcohol test within eight hours, the supervisor shall cease efforts to administer the test and document why a test was not administered.
- 4.2.4.4 All CDL drivers ready to perform safety-sensitive functions and riding in the control compartment of the CMV shall be subject to post-accident testing.
- 4.2.4.5 Reasonable suspicion tests may be administered after an accident that does not meet the requirements for post-accident testing, if appropriate.
- 4.2.4.6 CDL drivers subject to post-accident testing shall remain readily available for testing or may be deemed to have refused to submit to testing.
- 4.2.5 Return-To Duty Testing
 - 4.2.5.1 Prior to returning to positions requiring performing safety-sensitive functions, CDL drivers who have violated drug and alcohol abuse standards shall:
 - 4.2.5.1.1 Complete and pass a return-to-duty test with a breath alcohol concentration of less than 0.02 on an alcohol test and a negative drug test result.
 - 4.2.5.1.2 Be approved for return to duty by the Substance Abuse Professional and the Department.
 - 4.2.5.2 CDL drivers returning to duty shall be subject to follow-up drug and alcohol testing without prior notice, for up to 60 months from the date of return to duty.
- 4.2.6 Follow-up Testing
 - 4.2.6.1 Follow-up testing shall be conducted for a period not to exceed 60 months following the date of return of CDL drivers to a safety-sensitive position.
 - 4.2.6.2 At least six unannounced follow-up tests shall be conducted during the first 12 months following return-to-duty. Testing shall include both drug and alcohol tests.

- 4.2.6.3 CDL drivers with a breath alcohol concentration of more than 0.02 on an alcohol test or positive drug test results on any of the follow-up tests shall be subject to dismissal. The Drug Testing Coordinator shall administer the follow-up testing when notified by supervision.

5.0 PRE-EMPLOYMENT/POST-OFFER DRUG AND ALCOHOL TEST INFORMATION FROM PREVIOUS EMPLOYERS

5.1 The Hiring Authority shall, when hiring for a position which requires a CDL:

5.1.1 Request pre-employment/post-offer candidates to provide the Hiring Authority an Applicant List to Obtain Past Drug and Alcohol Test Results, Form 408-3, and a Request/Consent for Information from Previous Employer(s) on Alcohol and Controlled Substances Testing, Form 408-4, for each previous employer for the two year period preceding the date of any inquiry.

5.1.1.1 These forms authorize the Department to receive the following past USDOT-required drug and alcohol test results for the two year period preceding the date of any inquiry:

5.1.1.1.1 Positive drug test results.

5.1.1.1.2 Breathe alcohol concentration of 0.04 or greater on alcohol tests.

5.1.1.1.3 Refusals to test.

5.1.1.2 Failure on the part of pre-employment/post-offer candidates to consent to the release of previous drug and alcohol test information shall automatically disqualify them from being placed in safety-sensitive positions.

5.1.2 Fax/mail/scan pre-employment/post-offer candidates' previous employer(s) the Applicant List to Obtain Past Drug and Alcohol Test Results form and the Request/Consent for Information from Previous Employer(s) on Alcohol and Controlled Substances Testing form.

5.1.3 Ask pre-employment/post-offer candidates if they have tested positive or refused to test on any pre-employment/post-offer drug or alcohol test for any employer for which they did not obtain employment during the last two years.

5.1.3.1 If pre-employment/post-offer candidates admit to a positive test result or a refusal to test, the Hiring Authority shall not appoint the individual to the position.

5.2 The Hiring Authority shall:

5.2.1 Receive previous employer(s) information for pre-employment/post-offer candidates and maintain the information in the CDL driver's CDL File.

5.2.1.1 The information shall be obtained within the first 14 days of the notification of a pre-employment/post-offer of employment.

- 5.2.1.2 If information is not received, the Hiring Authority shall make a good faith effort to obtain the information and document the manner in which the good faith effort was made.
- 5.2.2 Inform pre-employment/post-offer candidates by telephone if they cannot be appointed.
- 5.2.3 Provide records to another employer upon receipt of a written request from a former or current CDL driver.
- 5.3 The Department shall not appoint pre-employment/post-offer candidates to perform safety-functions if the Department obtains information indicating they had a breath alcohol concentration of 0.04 or above on an alcohol test, a positive drug test result, an adulterated result or refused to test. The Department shall not appoint a pre-employment/post-offer candidate with these results who went through an approved and certified rehabilitation program.
- 5.4 Pre-employment/post-offer candidates shall not be appointed until 5.1.1 through 5.2.1.1 of this section is complete.

6.0 REPORTING

- 6.1 The Human Services Bureau shall prepare and maintain a Monthly and Annual Year Calendar Summary of the results of the Department's CDL Drug and Alcohol Testing Program.
- 6.2 Upon the Federal Highway Administration's notification the Department has been selected to submit its Calendar Year Summary, the Department shall submit the required report in the format specified in the Rule by March 15 of that year.

7.0 RIGHTS AND RESPONSIBILITIES

- 7.1 The Drug Testing Coordinator shall:
 - 7.1.1 For CDL random drug and alcohol testing:
 - 7.1.1.1 Oversee the activities of the contractor.
 - 7.1.1.2 Ensure the contractor's testing database from which the selections are made is kept updated and current.
 - 7.1.1.3 Receive the computer-generated random selections from the contractor and coordinate with CDL driver supervisors for implementation of required testing.
 - 7.1.2 As the Department's contact regarding the Department's Drug and Alcohol Testing Program:
 - 7.1.2.1 Receive drug and alcohol test results from the contracted collection site/laboratory by telephone and ensure appropriate action is taken, in accordance with Department Order #522, Drug-Free Workplace.

- 7.1.2.2 Attempt to make contact with pre-employment/post-offer candidates and CDL drivers if the Medical Review Officer is unable to contact them directly after a confirmed positive drug test result.
 - 7.1.2.2.1 The Drug Testing Coordinator shall take every practical step to ensure the confidentiality of the contact.
 - 7.1.2.2.2 If, after making all reasonable efforts to contact CDL drivers and documenting the steps, the Drug Testing Coordinator is unable to make contact, the supervisor shall temporarily remove CDL drivers from safety-sensitive positions.
 - 7.1.2.2.3 Reasonable efforts shall include as a minimum, three attempts spaced reasonably over a 24-hour period to reach CDL drivers at the day and evening telephone numbers listed on the Chain of Custody form.
 - 7.1.2.3 Receive the follow-up (hard copy) written test results from the contracted collection site/laboratory and provide confidential storage of all drug and alcohol related records.
 - 7.1.2.4 Report confirmed positive test results immediately to the proper Hiring Authority.
- 7.2 Managers, supervisors and Department officials shall:
- 7.2.1 Immediately remove CDL drivers from performing safety-sensitive functions upon receipt of a verified test drug or alcohol test result for any of the following:
 - 7.2.1.1 A breath alcohol concentration of 0.02 or greater on an alcohol test or a positive drug test result.
 - 7.2.1.2 Refusal to test.
 - 7.2.1.3 Verified adulterated or substituted test result.
 - 7.2.2 Arrange for transportation to a designated collection site/laboratory when post-accident or reasonable suspicion testing is required.
 - 7.2.3 Prohibit CDL drivers from performing safety-sensitive functions if they are aware they have tested positive for drugs, are using drugs, or are in possession of drug(s).
 - 7.2.4 Proceed with reasonable suspicion testing when there is cause to believe CDL drivers are under the influence of drugs or alcohol.
- 7.3 The Medical Review Officer shall:
- 7.3.1 Prohibit the disclosure of medical information received as part of the drug and alcohol testing verification process to any third party, except when permitted as outlined in this section. The Medical Review Officer shall disclose such information to the Department, the USDOT or other federal safety agency, or a physician responsible for determining the medical qualifications of CDL drivers, only if:

- 7.3.1.1 A USDOT regulation permits or requires such disclosure.
- 7.3.1.2 In the Medical Review Officer's reasonable judgment, the information:
 - 7.3.1.2.1 Could result in the CDL driver being medically disqualified under an applicable USDOT Rule.
 - 7.3.1.2.2 Indicates continued performance of the CDL driver's safety-sensitive functions could pose a significant safety hazard.
 - 7.3.1.2.3 CDL drivers give written permission.
 - 7.3.1.2.4 The disclosure is pursuant to a court order.
- 7.3.2 Review all negative and positive drug test results and interview CDL drivers who tested positive to verify the contracted collection site/laboratory report before the Department is notified.
- 7.3.3 Cancel the test if there is sufficient evidence a result is scientifically insufficient for further action or tests of the process have revealed inconsistent results.
- 7.3.4 Determine whether there is a legitimate medical explanation for a confirmed positive, adulterated, substituted and invalid drug test result from the contracted collection site/laboratory.
- 7.3.5 Contact CDL drivers directly and confidentially to determine whether they wish to discuss a positive test result.
 - 7.3.5.1 If is unable to contact CDL drivers directly, notify the Drug Testing Coordinator to attempt to contact them.
- 7.3.6 Verify a test as positive when:
 - 7.3.6.1 The CDL driver expressly declines the opportunity to discuss the test.
 - 7.3.6.2 More than 72 hours has elapsed since the CDL driver was contacted by the Drug Testing Coordinator and instructed to contact the Medical Review Officer.
 - 7.3.6.3 Reasonable efforts to contact the CDL driver have failed and ten days have elapsed since the confirmed positive drug test result.
- 7.3.7 Order a retest of the split specimen after receiving a written request from CDL drivers. The Medical Review Officer shall be the only person authorized to order a retest of the split specimen.

8.0 RECORDS AND RETENTION

- 8.1 The Department's CDL Drug and Alcohol Testing Program records retention shall be in accordance with the FMCSA Drug and Alcohol Testing Rules, as outlined in this section.

- 8.2 The following shall be maintained by the Human Services Bureau with controlled access:
 - 8.2.1 Verified positive drug test results (five year retention).
 - 8.2.2 Refusals to submit to required tests (five year retention).
 - 8.2.3 Annual Calendar Year Summary (five year retention).
 - 8.2.4 Records relating to the collection process (three year retention).
 - 8.2.5 Collection log books if used.
 - 8.2.6 Documents related to the CDL random drug and alcohol selection process.
 - 8.2.7 Consolidated Annual Calendar Year Summaries.
 - 8.2.8 Department's copy of the alcohol test form and the drug test chain of custody and control form; documents sent by the Medical Review Officer.
 - 8.2.9 Agreements with contracted collection sites/laboratories, Substance Abuse Professionals and Medical Review Officers.
 - 8.2.10 The names and positions of Department officials and their roles in the CDL Drug and Alcohol Testing Program.
 - 8.2.11 Semi-Annual Statistical Summaries in accordance with Federal Drug and Alcohol Testing Rules.
 - 8.2.12 Negative and canceled drug test results and alcohol test results with a concentration less than 0.02 shall be maintained for one year.
- 8.3 The following shall be maintained by the Hiring Authority, the Employee Relations Unit, or the Staff Development and Training Bureau:
 - 8.3.1 Substance Abuse Professional's evaluations and referrals (five year retention).
 - 8.3.2 Information obtained from previous employers concerning drug and alcohol tests (three year retention).
 - 8.3.3 Documentation of reasoning for reasonable suspicion testing and post-accident testing.
 - 8.3.4 Documents verifying medical explanation for the inability to provide adequate breath or urine for testing.
 - 8.3.5 Documentation of refusal to submit to required tests.
 - 8.3.6 Documents provided by CDL drivers to dispute test results.
 - 8.3.7 Documents related to prior employers test results; documentation of any other violations of the Department's CDL Drug and Alcohol Testing Program.

- 8.3.8 Records pertaining to Substance Abuse Professionals' determinations of assistance and CDL drivers' compliance with recommendations including any and all CDL driver signed documents relative to CDL Drug and Alcohol Testing Program Awareness Training.
- 8.3.9 All documentation relating to CDL Drug and Alcohol Testing Program Awareness Training, policies, records of Supervisor Training, and that the training complies with Federal Drug and Alcohol Testing Rules.
- 8.3.10 Required CDL Drug and Alcohol Testing Program Awareness Training records shall be retained while performing safety-sensitive functions and for two years after CDL drivers cease performing those functions.
- 8.4 Review or copies of the records shall only be requested in writing in an approved format.
- 8.5 Records may be disclosed in a lawsuit, criminal prosecution, administrative proceeding or grievance initiated by CDL drivers, including but not limited to workers compensation, unemployment compensation, or other proceeding relating to a benefit sought by CDL drivers. Records may be made available to another person upon written release by a CDL driver.

DEFINITIONS/GLOSSARY

Refer to the Glossary of Terms

FORMS LIST

408-3, Applicant List to Obtain Past Drug and Alcohol Test Results

408-4, Request/Consent for Information from Previous Employer(s) On Alcohol and Controlled Substances Testing

AUTHORITY

A.R.S. §41-773, Causes for Dismissal for Employees in the Covered Service

49 CFR, Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs

49 CFR, Part 382, Controlled Substances and Alcohol Use Testing

49 CFR, Part 382.401, Retention of Records

49 CFR, Part 391, Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructions

49 CFR, Part 395.2, Definitions