



TEXAS TECH UNIVERSITY™

Operating Policy and Procedure

OP 70.35: Drug and Alcohol Testing for Safety- and Security-sensitive Positions

DATE: December 9, 2015

PURPOSE: The purpose of this Operating Policy/Procedure (OP) is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol or the use of controlled substances by applicants for and employees in security-sensitive positions and drivers of commercial motor vehicles. It is also the intent of this OP to comply with the Federal Highway Administration (FHWA) and the Department of Transportation (DOT) regulations requiring drug and alcohol testing for employees in safety-sensitive functions.

This OP applies to all Texas Tech University System (TTUS) administration and Texas Tech University (TTU) applicants for and employees in security-sensitive Level II positions and/or with duties or activities that require a commercial driver license (CDL), referred to hereafter as “CDL safety-sensitive.” The provisions of this drug and alcohol testing policy do not relieve an employee from requirements pursuant to other university policies on drugs and alcohol.

REVIEW: This OP will be reviewed in September of odd-numbered years by the managing director of Human Resources, the chief of police, and the managing director of the TTUS Office of Risk Management with substantive revisions forwarded through administrative channels to the vice chancellor/chief financial officer or designee, the chief of staff and associate vice president for administration, and the university counsel.

POLICY/PROCEDURE

1. General

a. Safe Work Environment

It is the policy of TTUS and TTU to be a drug-free workplace and to prevent and eliminate drug abuse from the workplace. The TTUS and TTU have the obligation to:

- Ensure a safe work environment for all employees;
- Protect the students and other members of the public against endangerment resulting from the impairment of employees' physical or mental capabilities;
- Protect its property and equipment from unnecessary damage; and
- Assure that all TTUS and TTU business is conducted with efficiency and quality.

The TTUS and TTU require, as a condition of initial and continued employment, that employees be free from the influence of alcohol and controlled substances while performing their duties as TTUS administration or TTU employees.

b. Safety-sensitive Positions

Positions that require possession of a CDL as a condition of employment are considered safety sensitive (CDL safety sensitive).

c. Security-sensitive Positions Level II

Positions designated as security-sensitive Level II are addressed in OP 70.20. These may include CDL safety-sensitive positions.

2. Prohibited Drugs

Prohibited drugs are defined in this section as:

- a. Any drug prohibited by federal law or university policy;
- b. Alcohol;
- c. Prescribed drugs consumed by a person but not prescribed to that person;
- d. Any drug that is not legally obtainable;
- e. Any drug that is legally obtainable but is not being used for the prescribed purpose or is not being taken according to the prescribed dosages; and
- f. Any drug that would have a medical effect of reducing an individual's ability to safely operate a motor vehicle or perform a CDL safety-sensitive function.

3. Employees Requesting Assistance

Any employee who requests assistance in locating a qualified substance abuse professional or counselor should contact the Employee Assistance Program (EAP). If an employee contacts a supervisor for assistance with a problem with which the EAP can be helpful, the supervisor should assist the employee in contacting the EAP. The EAP provides confidential professional assessment, referral, and/or counseling services to assist employees in identifying and addressing personal problems. The EAP offers up to five counseling sessions per household per year at no cost to the employee. Any counseling or treatment beyond these five sessions will be referred to another provider and the charges assessed by that provider are the responsibility of the individual. In many cases, further counseling by another provider can come under the benefits of the employee's health plan (please refer to plan booklet). EAP records are separate and not a part of an employee's personnel file. An employee's use of EAP services or any other information concerning the nature of the problem is not released to the employer or a supervisor. Confidentiality is regulated by federal guidelines. An employee may seek assistance by contacting the EAP directly at (806) 743-1327 or 1-800-327-0328. The EAP is located in the Texas Tech University Health Sciences Center, Department of Neuropsychiatry, 1C102 HSC building. Employees working at a regional campus or remote work site should contact the EAP by calling 1-800-327-0328 to obtain a referral to the closest facility or service. Refer to OP 70.33 for additional information on the EAP.

4. Responsibilities

a. Departmental

It is the responsibility of each employing department requiring security-sensitive Level II and/or CDL safety-sensitive positions to follow the policies and procedures set forth in this OP. The department administrator will be responsible for ensuring that the following requirements are met:

- (1) Identify all positions requiring incumbents to possess a CDL to perform their job duties or that are designated security-sensitive Level II, and provide a list to Human Resource Services. Employing departments should review and update the list when position titles change or when it is otherwise necessary.
- (2) All employees in a security-sensitive Level II or CDL safety-sensitive position must receive educational materials that explain the Texas Tech University policies and procedures with respect to meeting these requirements on the first day of employment or before operation of a commercial motor vehicle.
- (3) Each employee in a security-sensitive Level II and CDL safety-sensitive position must receive a copy of these materials before the start of the alcohol/drug testing. The cost of testing will be borne by the hiring department. Information the employee must receive includes:
 - A copy of this OP;
 - The identity of the person designated by the hiring department to answer questions about the educational materials;
 - Which positions are subject to these regulations; and
 - A notice to all security-sensitive Level II and CDL safety-sensitive position personnel and applicants that they must submit to post-offer/pre-employment alcohol and/or drug testing and are subject to post-accident drug and alcohol testing

TTUS and TTU will not be held liable for negligence by the drug- and alcohol-testing vendor.

b. Supervisor Training

At a minimum, the department must provide 60 minutes of training on drug and alcohol abuse by a qualified substance abuse professional to all supervisors who may be involved in determining if reasonable suspicion exists to require an employee to take an alcohol or drug test. No supervisor shall determine if reasonable suspicion exists without the completion of the required training. The EAP may conduct qualified training. Any expense relative to this training will be borne by the department.

c. Recordkeeping Requirements

All records of the drug and alcohol abuse prevention and testing program must be kept in a secure location with controlled access. All records must be maintained according to the following schedule:

- (1) Documents related to verified positive controlled substance test results and alcohol test results indicating an alcohol concentration of 0.02 or greater - five years;
- (2) Documentation related to refusals to take required tests - five years;
- (3) Calibration documentation - five years;
- (4) Records related to driver evaluations and referrals - five years;
- (5) Annual calendar year summaries - five years;
- (6) Records related to collection process - two years;
- (7) Training records - two years;
- (8) Documents related to negative or canceled tests - one year; and
- (9) Alcohol test results indicating an alcohol concentration of less than 0.02 - one year.

d. Reporting Requirements – CDL Safety-sensitive Positions

To comply with FHWA and DOT requirements, each department must prepare and maintain an annual calendar year summary of the results of its drug and alcohol abuse prevention and testing program for CDL safety-sensitive positions only. This report must be completed no later than March 15 for the previous calendar year and must be forwarded to the FHWA through the Human Resource Services managing director.

5. **Testing**

- a. All alcohol and drug testing shall be conducted by an approved drug- and alcohol-testing vendor licensed by the state of Texas and for whose services TTUS or TTU contracts. Security-sensitive Level II and CDL safety-sensitive position applicants and employees will be tested under controlled procedures for alcohol by a breath alcohol technician. The drug test will screen for the following drugs:

DOT – CDL Safety Sensitive

Marijuana metabolites
Cocaine metabolites
Amphetamines
Opiate metabolites
Phencyclidine (PCP)

Non-DOT – Security Sensitive Level II

Amphetamines
Methamphetamines
Marijuana
Cocaine
Phencyclidine (PCP) and other hallucinogens
Opiates
Barbiturates
Benzodiazopines

Propoxyphene
Methadone
Any metabolite of the above-listed substances
Alcohol (ethyl alcohol or ethanol)
Misuse or abuse of prescription medication

b. Security and Chain of Custody

Vendor drug-testing laboratories shall be secure at all times. Sufficient security measures should be taken to control access to the premises and to ensure that only authorized personnel handle specimens or are allowed access to records storage. Vendor laboratories shall use chain of custody procedures to maintain control and accountability of specimens from receipt through completion of testing, reporting of results during storage, and continuing until final disposition.

- c. Work missed due to a positive outcome from an alcohol or drug test will be charged to the employee's vacation leave balance, if available, or leave without pay.
- d. Drug and alcohol testing is required for all CDL safety-sensitive position applicants and employees and security-sensitive Level II position applicants and employees and will include:

(1) Pre-employment Drug Testing

Testing is conducted after an offer of employment but prior to confirmation of employment or prior to transferring to a security-sensitive Level II or CDL safety-sensitive position. Applicants selected for hire who refuse to consent to drug testing or who test positive for the presence of substances listed in 5.a of this OP will no longer be considered eligible for employment in the position offered. These applicants also will not be considered for employment with TTUS administration or TTU in any other position and will not be eligible for employment in any capacity with TTUS administration or TTU for a period of six months.

(2) Post-accident Drug or Alcohol Testing

If reasonable suspicion exists, testing may be conducted when an accident occurs causing an injury to anyone or damage to property owned by others or Texas Tech University or when the employee receives a traffic citation as a result of a motor vehicle accident.

The employee must take a breath alcohol test and produce a urine sample for drug testing within two hours of the accident. Employees who are required to be post-accident tested for alcohol are to remain readily available for testing; failure to do so may be deemed a conscious refusal of testing by the employee. Two supervisors and/or a Texas Tech Police Department representative will escort the employee to the approved testing facility during or immediately after the employee's regular work period. The time taken for transportation and sample collection shall be deemed work time, and the employee shall be compensated as such.

(3) Random Alcohol and Drug Testing for CDL Safety-sensitive Positions

Annual alcohol testing is conducted for at least 25 percent of all CDL safety-sensitive personnel, and annual drug testing is conducted for at least 50 percent of all CDL safety-sensitive personnel. The random selection of employees and dates must be spread throughout the year.

When a supervisor notifies an employee that it is necessary to submit a urine specimen for a random drug test, the employee shall provide the proper sample at the location assigned by the university no later than two hours from the time the supervisor made notification. Failure by the employee to follow this procedure will result in removal from duties and disciplinary action, up to and including dismissal.

An employee who tests positive is medically unqualified to drive and will be subject to disciplinary action up to and including dismissal.

(4) Alcohol and Drug Testing for CDL Safety-sensitive Positions Due to Reasonable Suspicion

Testing is conducted when a supervisor has cause to believe that an employee is under the influence of alcohol or drugs at any time while the employee is on duty. The supervisor will visit with the employee to determine if there is any reason to explain the actions of the employee. If the supervisor determines that a reasonable suspicion alcohol or drug test is required after this discussion with the employee, the supervisor will immediately contact Texas Tech Police to conduct a professional evaluation of the employee's responses and reactions.

If deemed appropriate, the employee will be taken to the TTU approved testing site. The supervisor will remain with the employee and provide transportation back to the work site. If an employee tests negative and has missed work because of the reasonable suspicion test, the employee will be paid for time missed. The supervisor shall document all observations of cause for reasonable suspicion and a summary of the discussion with the employee. An employee who tests positive is medically unqualified to drive and will be subject to disciplinary action up to and including dismissal.

(5) Return to Duty and Follow-up Alcohol or Drug Testing

Testing is conducted when an individual who has violated the prohibited alcohol and drug conduct standards returns to performing CDL safety-sensitive duties. Follow-up tests are unannounced, and at least six tests must be conducted in the first 12 months after an employee returns to duty. Follow-up testing may be extended for up to 60 months following return to duty.

- e. A driver who refuses to take an alcohol or drug test as required by law or as requested by a supervisor or who does not report for a test or fails to comply with any form of alcohol or drug testing should immediately notify the appropriate supervisor of such refusal. That employee will be deemed medically unqualified to drive, and the employee will be placed off duty and be subject to disciplinary action up to and including dismissal. Forgetting to take an alcohol or drug test will not be considered an acceptable reason for not taking such test. Personal or family emergencies will be evaluated on an individual basis; the decision

regarding continuing employment will be the responsibility of the employee's supervisor with concurrence of the managing director of Human Resource Services.

- f. Alcohol and drug test results are confidential. Test results may only be released to the employer and the substance abuse professional. The employee may submit a written request to the department for copies of the test results. Former employees may submit a written request for a summary of test results during their employment at Texas Tech University, and it will be provided. Any other release of this information will strictly follow the Federal Motor Carrier Safety Regulations.
- g. An applicant or employee reporting to a testing facility for an alcohol or drug test must have a valid form of photo identification to present to the testing agency unless accompanied by a supervisor.
- h. If an applicant or employee tests positive for alcohol or drugs, arrangements for transportation to that person's residence will be made.

6. Regulations

- a. An employee may not perform a CDL safety-sensitive or security-sensitive Level II function if that employee tests positive for drugs or has a blood alcohol level of or exceeding 0.02. Drug testing is a two-stage process. First, a screening test is performed. If it is positive for one or more tested drugs, then a confirmation test is performed for each identified drug, thereby ensuring that over-the-counter medications or preparations are not reported as positive. If the finding is "dilute positive," it will be deemed a positive result. If the finding is "dilute negative," a second screen will be required at the expense of the hiring department. The second test will be conducted using hair follicle protocol.

A second breath alcohol confirmation test will be conducted if the test is 0.02 or greater. If the test is 0.02 or greater but less than 0.04, the employee will be removed from duty for 24 hours or until retesting shows the concentration is less than 0.02. If the test is 0.04 or greater, the employee will be immediately removed from CDL safety-sensitive or security-sensitive Level II functions.

The supervisor will meet with each employee who tests positive for alcohol or drugs and will inform the employee of the test result. Based upon the information available after the meeting with the employee, the supervisor shall determine whether to:

- (1) Proceed to impose appropriate disciplinary action pursuant to OP 70.31 on Employee Conduct, up to and including dismissal; and/or
- (2) Offer the employee the opportunity to participate in and satisfactorily complete, at the employee's expense, an appropriate employee assistance program or rehabilitation program for alcohol and/or drug abusers as a condition of continued employment. An employee who chooses to participate in such a program must be informed that TTUS administration and/or the university will pursue appropriate disciplinary action if the employee does not satisfactorily complete the prescribed program. If the employee chooses to participate in the Employee Assistance Program, the supervisor will notify the director of EAP of the nature of the referral.

- b. A CDL safety-sensitive function is described as any duty related to the safe operation of any vehicle or equipment that requires the operator to possess a commercial driver license. Vehicles and/or equipment that require the operator to possess a commercial driver license include, but may not be limited to, the following:
 - (1) A vehicle with a gross weight rating in excess of 26,000 pounds;
 - (2) Any vehicle designed to transport more than 16 persons, including the driver; and
 - (3) Any vehicle required to display hazardous material placards.
- c. Any employee performing CDL safety-sensitive functions will be required to submit to alcohol and drug testing:
 - (1) Prior to employment (drug testing only);
 - (2) Upon reasonable suspicion of alcohol or drug abuse at any time while on duty or reporting for duty;
 - (3) On an unannounced random basis;
 - (4) Following an accident when required by DOT regulation or at the request of the employee's department; or
 - (5) If allowed to return to duty for a covered position after having been identified by a substance abuse professional as needing assistance in resolving problems with drug or alcohol abuse. Such an employee will be subject to a minimum of six unannounced follow-up drug or alcohol tests at the employee's expense over the first 12 months following return to duty.
- d. No employee shall use, manufacture, sell, or possess any narcotic, drug, or controlled substance on Texas Tech property.
- e. An employee shall not enter Texas Tech property or be in a location where normal university business transactions occur or report for duty while under the influence of alcohol, drugs, or other controlled substances.
- f. Employees who are taking a legal drug or medication (over-the-counter or by prescription) that may adversely affect judgment, coordination, or other senses or the ability to perform work in a safe and productive manner must notify their supervisor before starting work. The department administrator, in consultation with Environmental Health and Safety and/or Human Resource Services, will decide whether the employee may remain at work and what work restrictions, if any, will apply. Employees found unable to work under this provision must use their sick leave (if appropriate), vacation leave, or leave without pay to cover the time not worked.

7. Appeal Procedure

Refer to OP 70.10 for specific information.

8. Leave of Absence for Alcohol or Drug Treatment Program

- a. An employee shall be permitted to take a leave of absence to undergo treatment in an approved alcohol or drug treatment program. The cost of the program will be entirely at the employee's expense. The leave of absence must be requested prior to:
- (1) The commission of any acts subject to disciplinary action;
 - (2) Any alcohol or drug test sample already submitted for testing; or
 - (3) The employee's notification to submit to testing.

The request must be made in writing to the supervisor.

- b. Such leaves may be granted on a one-time basis and shall be for a period of up to 90 days, unless extended by mutual agreement. While on such leave, the employee will be required to use accrued sick leave, vacation leave, or leave without pay. This provision will not amend or alter any other pending disciplinary action.
- c. Within five days after the expiration of the leave of absence for alcohol or drug treatment, the employee must present to the appropriate department written certification of the completion of the approved program of alcohol or drug treatment. The employee shall then submit to the university's alcohol or drug tests and a negative result must be obtained prior to the employee's return to work.

Failure to present certification, failure to submit for testing, or obtaining a positive result on the alcohol or drug test are grounds for immediate dismissal. When the department is notified that the employee tested negative, that person will be allowed to return to work, thus returning from leave of absence. However, the employee shall be required to submit to random alcohol and/or drug testing upon departmental request, at the discretion of the university and in accordance with the law.

9. Notice of Conviction

Any employee who is convicted of violating any federal, state, or local criminal alcohol or drug statute must notify the appropriate supervisor before the next workday after such conviction. For the purpose of this notice requirement, a conviction includes:

- A finding of guilt;
- An admission of guilt;
- A no contest plea;
- Any form of deferred adjudication;
- Any requirement of community service; and/or
- An imposition of sentence by any judicial body for any violation of a criminal statute involving the unlawful manufacture, distribution, dispensation, possession, or use of alcohol or drugs.

10. Right to Change Policy

Texas Tech University System and Texas Tech University reserve the right to interpret, change, modify, amend, or rescind this policy, in whole or in part, at any time without the consent of employees.

11. Authoritative Reference

65 Federal Register (FR) 79462, Dec. 19, 2000; 65 FR 41944, Aug. 9, 2001
Commercial Driver License as defined by the Texas Department of Public Safety

12. Relevant Forms

Authorization for Pre-employment or 15 Passenger Van Operator Drug Testing and *Consent to Drug and Alcohol Testing* may be accessed at
<http://www.depts.ttu.edu/hr/forms.asp>