Texas Woman's University
University Regulation and Procedure

Regulation and Procedure Name:	**Drug and Alcohol Testing for TWU Drivers of Commercial Motor Vehicles**
Regulation and Procedure Number:	**URP: 05.650**
Policy Owner:	**Finance and Administration**

POLICY STATEMENT

This policy establishes Texas Woman's University's procedures and guidelines for compliance with the Department of Transportation regulations concerning commercial motor vehicle safety; Title 49 CFR Part 40, as amended, Procedures for Transportation Workplace Drug and Alcohol Testing Programs under the rules of the Omnibus Transportation Employee Testing Act of 1991, as amended, the Federal Motor Carrier Safety Administration ("FMCSA") and the U.S. Federal Highway Administration ("FHWA").

APPLICABILITY

This policy is applicable to TWU Employees.

DEFINITIONS

1. "Accident" means an occurrence involving a commercial motor vehicle operating on a public road, and/or campus roads, in which:

    a. There is the loss of human life; or

    b. The driver receives a citation for a moving traffic violation arising from the accident; and either

        i. The vehicle is towed from the scene; or

        ii. Someone is medically evacuated from the scene.

2. "Adulterated Specimen" means a specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

3. “Alcohol” means the intoxicating agent in beverage alcohol (ethyl alcohol) or other low molecular weight alcohols, including methyl or isopropyl alcohol

4. “Chain of Custody” means the procedure used to document the handling of a urine specimen from the time the employee gives the specimen to the collector until the specimen is destroyed. This procedure uses the Federal Drug Testing Custody and Control Form (“CCF”).

5. “Commercial Driver’s License Requirements” means a Commercial Driver’s License/CDL is required for drivers of vehicles designed to transport 16 or more passengers including the driver, drivers of trucks weighing at least 26,000 pounds, and drivers of trucks of any size carrying hazardous materials.

6. “Commercial Motor Vehicle (CMV)” means a vehicle qualifying under these regulations is one that is designed to carry 16 or more passengers, including the driver; vehicles having a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; and/or any size motor vehicle used to transport hazardous materials requiring placards (Hazardous Materials Transportation Act).

7. “Confirmatory Test” means for alcohol testing, a confirmatory test is a second test following a screening test with a result of 0.02 or greater, conducted 15-30 minutes later, that provides quantitative data of alcohol concentration. For controlled substances testing, a confirmatory test is a second analytical procedure to identify the presence of a specific drug or metabolite, independent of the initial test.

8. “Controlled Substance” means any drug, substance, or immediate precursor listed in Schedules I-V or Penalty Groups 1 - 4 of the Controlled Substances Act of 1988, as amended.

9. “Covered Employee” means any employee required to have a commercial driver’s license (“CDL”) as a requirement of the job and is required to drive a qualifying commercial motor vehicle.

10. “Designated Employer Representative (DER)” means an employee authorized by the 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 employer. The Designated Employer Representative (DER) for this policy is Associate Vice President of Human Resources, or his designated representative.

11. “Dilute Specimen” means a specimen with creatinine and specific gravity values that are lower than expected for human urine.

12. “Illegal Drug” means any drug in any detectable amount which is not legally obtainable; any drug which is legally obtainable but has not been legally obtained; any prescribed drug not legally obtained; any prescribed drug not being used for the prescribed purpose; any over-the-counter drug being used at a dosage level different than recommended by the manufacturer or being used for a purpose other than intended by the manufacturer; and any drug being used for a purpose not in accordance with bona fide medical therapy.

13. “Negative Dilute Test Result” means when the results of a drug test is negative for drugs or alcohol but the natural substance creatinine in the urine is abnormally low.

14. “Positive Test (alcohol)” means when a driver’s confirmatory test result reads 0.04% or higher.

15. “Positive Test (drug)” means when a driver’s confirmatory test or retest result is at or above cutoff levels specified by DHHS in DOT rules and regulations, and has been verified by the MRO to be a positive test.

16. “Refuse to Submit” means a driver 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 or fails to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received notice of the requirements or engages in conduct that clearly obstructs the testing process.

17. “Refusal to Test” means admitting to the collector or MRO that the specimen was adulterated or substituted; possessing or wearing a prosthetic or other device that could be used to interfere with the collection process; and in the case of a directly observed or monitored collection in a drug test, failing to permit the observation or monitoring of the provision of a urine specimen, which now includes: failing to follow the observer’s instructions to raise clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine whether there is any prosthetic or other device that could be used to interfere with the collection process.

18. “Safety-sensitive Function” means all time spent either waiting to be dispatched; inspecting equipment or otherwise inspecting, servicing, and/or conditioning any commercial motor vehicle; driving; in or upon a commercial motor vehicle; loading/unloading a vehicle, supervising or assisting in the loading/unloading process, attending a vehicle being loaded/unloaded, remaining in readiness to operate a vehicle, or giving or receiving receipts for shipments loaded/unloaded; performing accident-related duties; or repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

19. “Testing Pool” means a listing of all current employees and prospective employees who do or will drive a qualifying motor vehicle(s) that requires a commercial driver’s license.

20. “Under the Influence” means the state of not having the normal use of mental or physical faculties resulting from the voluntary introduction into the body of an alcoholic beverage or controlled substance.

REGULATION AND PROCEDURE

I. Testing Policy

The University is required to conduct post-accident, random, and reasonable suspicion testing for alcohol and pre-employment, post accident, random, and reasonable suspicion testing for controlled substances of each applicant for employment or employee who is required to possess a commercial driver’s license. Covered employees are prohibited from refusing to take a required test. Employees whose test results confirm prohibited alcohol concentration levels or the presence of a controlled substance, or who refuse testing, are subject to disciplinary action up to and including termination of employment

II. Applicants for Employment

A. All applicants who have been conditionally accepted for employment in positions that require a commercial driver’s license, above, will be required to be tested for illegal drug usage. A verified negative test result will be required on this controlled substance test.

B. Failure to report to testing will nullify the offer of employment unless an official of the Office of Human Resources has given prior approval. Only one excused missed appointment will be granted. Applicants may re-apply for a position at a future date

1. All published or posted notices of vacancies in positions covered by this Policy shall state that the applicant selected for hire will be required to consent to a urinalysis for the purpose of testing for the presence of illegal drugs.

2. Applicants selected for hire who refuse to consent to a urinalysis or who test positive for the presence of illegal drugs in prohibited concentrations will not be considered for employment in a position covered by this Policy and may not reapply for such employment for a period of six months.

3. Prior to signing the consent form for testing, applicants selected for hire will be provided with a copy of this policy informing them of testing procedures.

III. Employee Conduct

A. No driver may be on duty and possess, be under the influence of, or use any illegal drug or other substance that impairs judgment or any other substance that makes driving unsafe.

B. A covered employee may not:

1. Report for duty, or stay on duty, while using any controlled substance

2. Report for duty, or stay on duty, if the employee has tested positive for a controlled substance

3. Refuse to submit to a drug or alcohol test

4. Report for duty, or stay on duty, with an alcohol concentration of 0.02 or greater

5. Report for duty, or stay on duty, if in possession of alcohol, if using alcohol, or within 4 hours of using alcohol

6. Use alcohol until post-accident testing is completed or for a period of 8 hours, whichever comes first, if the employee is involved in an accident while on the job

7. Permit a subordinate employee to perform or continue to perform safety-sensitive functions when possessing actual knowledge that a driver has engaged in conduct prohibited by this policy.

C. TWU department heads are required to identify qualifying vehicles and employees who drive those vehicles. This information must be provided to Human Resources for purposes of administering this policy.

D. Employees of the University who are not identified as “in the test pool” based on the provisions of this policy may **not** drive qualifying vehicles as described in this policy.

IV. Consequences

A. Employees with positive tests shall not perform a driving function if any of the prohibitions are violated. The Designated Employer Representative, DER (or his or her designated representative) will meet with each employee who tests positive and inform the employee of the test result. Based upon the information available after the meeting with the employee, the DER (or his or her designated representative) shall determine whether:

1. To proceed to impose appropriate disciplinary action pursuant to the University's procedure for TWU's Standards of Conduct, Discipline, and Separation Policy and/or

2. To offer the employee the opportunity to participate in and satisfactorily complete, at the employee's expense, an appropriate rehabilitation program for alcohol and/or drug abusers as a condition of continued employment. An employee who chooses to participate in such a program will be informed that the University will pursue appropriate disciplinary action if the employee does not satisfactorily complete the prescribed program; or

3. To allow the employee who has tested below 0.02 for alcohol to return to work after 24-hour period.

B. If the DER determines to offer the employee the opportunity to participate in a rehabilitation program:

1. The employee will be advised of the resources available in evaluating and resolving the problem. This will include the contact information of the Employee Assistance Program who will provide contact information of substance abuse professionals and counseling and treatment programs.

2. The driver must be evaluated by a Substance Abuse Professional ("SAP") that will determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and drug use.

3. Before returning to duty, the driver must undergo a return-to-duty test for: alcohol with a result of less than 0.02; or if the conduct involved drugs, with a verified negative result.

4. If the driver was identified as needing assistance in resolving the problem, the driver must:

a. be evaluated by the Substance Abuse Professional to determine that the driver properly followed any prescribed rehabilitation program,

b. be subject to unannounced follow-up alcohol and drug tests; the number and frequency to be determined by the SAP consisting of at least 6 tests during the first 12 months following the driver's return to duty and possible follow-up testing for up to 60 months.

C. Violation of this policy by covered drivers is grounds for disciplinary action up to and including termination from TWU employment.

V. Rehabilitation

The University is not required to provide or pay for rehabilitation or to hold a job open for a driver. The University will make sure that the substance abuse professional refers the driver to an entity that the professional does not have an interest in. There is no University obligation to an applicant for the failure of a pre-employment drug screen.

VI. Test Required

Specimen validity testing to determine if it is consistent with normal human urine, will be conducted on all urine specimens provided for testing under DOT authority.

VII. Employee Testing

Employees in positions that involve the duties or activities described in this Policy will be required to submit to testing to determine the presence of illegal drugs or alcohol under the following circumstances:

A. Direct Observation

When observed using alcohol or illegal drugs while on duty requiring the performance of safety-sensitive functions;

B. Post Accident

When involved in an on-the-job driving accident per the definition found in this policy. Employees involved in any accidents are required to report them as soon as possible to their supervisor:

C. Random

Drivers will be randomly tested at a minimum annual percentage rate of 10% of the number of drivers for alcohol testing, and 50% for controlled substances testing. The random alcohol test must be performed immediately prior, during or immediately after a driver is about to, or has performed a safety sensitive function. All drivers must have an equal chance of being selected.

D. Reasonable Suspicion

A driver will be required to submit to an alcohol and/or controlled substance test when there is reasonable suspicion to believe that the driver has violated the prohibitions concerning alcohol and/or controlled substances. The employer's determination must be based on specific, contemporaneous, articulated observations concerning the appearance, behavior, speech or body odors of the driver during, just preceding or just after the period of the work day that the employee is performing in the

safety-sensitive function. The required observations shall be made by a supervisor or manager who has been trained in this policy.

E. Return-to-Duty

Before a driver is allowed to return to duty requiring the performance of a safety-sensitive function after engaging in prohibited conduct concerning alcohol or controlled substances, 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 controlled substances test with a result indicating a verified negative result.

F. Follow-up

The Substance Abuse Professional (SAP) will establish a follow-up testing plan. The employer must ensure that the follow-up testing plan is carried out. A minimum of six tests must be conducted in the first 12 months, and the driver may be subject to this test for a maximum of 60 months.

VIII. Post Accident Testing

A. As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road or on campus, the University will test for alcohol for each driver. The following table notes when a post accident test is required to be conducted by law.

Type of accident involved	Citation issued to the CMV driver	Test must be performed by employer
Human fatality	YES NO	YES YES
Bodily injury with immediate medical treatment away from the scene	YES NO	YES NO
Disabling damage to any motor vehicle requiring tow away	YES NO	YES NO

B. In determining the “Citation issued to the CMV driver, the citation must be issued within certain time limits: 8 hours for alcohol and 32 hours for controlled substances.

C. For alcohol, if a required test is not administered within two hours following the accident, the DER shall prepare and maintain on file a record stating the reasons the test was not promptly administered. For controlled substances, if a test required by this section is not administered within 32 hours following the accident, the employer shall cease attempts to administer a controlled substances test, and prepare and maintain on file a record stating the reasons the test was not promptly administered.

IX. Refusal to Submit and Refusal to Test

A. By continuing employment with the University, employees have consented to participation in the University's Drug and Alcohol Testing Program. The University will secure a consent form signed by the employee to be tested.

B. An employee will be subject to disciplinary action including termination pursuant to the University's Procedures for Standards of Conduct, Discipline, and Separation for any of the following:

1. Refuses to submit to a test and refuses to test when requested,

2. Fails to appear for a test in the timeframe specified.

3. Fails to remain at the testing site until the testing process is complete.

4. Fails to undergo a medical examination to verify insufficient volume.

5. Fails to cooperate with any part of the testing process including observed collection of specimen.

X. Required Direct Observations

A. Directly observed collections are authorized by DOT's 49 CFR Part 40 as amended and required when there is any evidence that tampering or attempted tampering may have occurred, or the test is required for return-to-duty and follow-up drug testing.

B. Direct observation now requires the employee to raise his or her shirt, blouse or dress/skirt, as appropriate, above the waist, just above the navel; and lower clothing and underpants to mid-thigh and show the observer, by turning around, that the employee has not attempted to tamper with the testing. The employee's refusal to allow direct observation is considered a refusal to test.

XI. Negative Dilute

In the event that an applicant or employee has a negative dilute test result, the employee will be required to undergo another test. Should this second test result in a negative dilute result, the test will be considered a negative and no additional testing will be required unless directed to do so by the DER.

XII. Positive Test

In the event an employee receives positive test results and the employee requests a confirmation test, the second testing will be done at the employee's expense. If the first test result is nullified and determined to be a false positive, the employee will be reimbursed for the cost of the confirmation test.

XIII. SAP Return to Work Procedures

Upon completion of the rehabilitation program (if recommended) the SAP conducts another face-to-face evaluation to determine if the employee actively participated in the program and has demonstrated successful compliance with the initial assessment and evaluation recommendations. If the employee successfully complied with the SAP's recommendations, the SAP will send a letter with the results to the University with any plans for aftercare treatment and a follow-up testing plan.

XIV. Confidentiality of Records

A. All information from an applicant's or an employee's drug and alcohol tests are confidential to the extent required by law. Records will be maintained in a secure manner, so that disclosure of confidential information to unauthorized persons does not occur.

B. The university will not release individual test results or medical information about an employee to third parties without the employee's specific written consent to release a particular piece of information to a particular, explicitly identified, person or organization at a particular time.

XV. Inquiries to Previous Employers

A. With an applicant's written authorization, Texas Woman's University will request information from previous employers, for a period of two years preceding the driver's date of application:

1. Alcohol tests with a result of 0.04 alcohol concentration or greater;

2. Verified positive controlled substances test results;

3. Refusals to be tested;

4. Other violations of drug and alcohol regulations; and

5. Documentation of completion of return-to-duty requirements.

B. If the applicant refuses to provide this written consent, the job offer will be rescinded.

C. If the University obtains information from a prior employer, that the applicant has violated a DOT agency drug and alcohol regulation, they will not be assigned to perform safety-sensitive functions unless information that the person has subsequently complied with the return-to-duty requirements can be obtained.

XVI. Record Maintenance

Records will be retained in compliance with the requirements of the law and the University record retention schedules to ensure that required records are maintained.

XVII. Reporting

The University will submit reports in accordance with Federal Regulations regarding alcohol and drug misuse prevention program. The University will utilize the US Department of Transportation Management Information Systems Report form for reporting purposes.

XVIII. Training

The University will provide all persons designated to supervise drivers at least 60 minutes of training on alcohol misuse and an additional 60 minutes of training on controlled substances use. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances. Recurrent training for supervisory personnel is not required. Covered employees will receive DOT required information and it will be documented that they received the materials.

REVIEW

This policy will remain in effect and published until it is reviewed, updated, or archived. This policy is to be reviewed once every six years. Interim review may be required as a result of updates to federal and state law or regulations, Board of Regents policies, or internal processes or procedures.

REFERENCES

None

FORMS AND TOOLS

Release of Information Form -- 49 CFR Part 40 Drug and Alcohol Testing

Drug and Alcohol Testing MSI Data Collection Form

Employee and Supervisor Education and Training

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