

Policies of the University of North Texas	Chapter 15
15.004 DOT Drug and Alcohol Testing of Commercial Drivers	Risk Management

Policy Statement. The purpose of this policy is to ensure the University’s compliance with the Department of Transportation’s (DOT) Employee Alcohol and Controlled Substances Testing requirements under the rules of the Omnibus Transportation Employee Testing Act of 1991 (The Act).

Application of Policy. Covered employees.

Definitions.

1. **Alcohol.** Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.
2. **Alcohol Concentration.** Alcohol concentration means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an Evidential Breath Test.
3. **Controlled Substance.** 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 it may be revised from time to time.
4. **Commercial Driver’s License (CDL).** A state-issued license required for drivers operating a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:
 1. has a gross combination weight rating of 11,794 or more kilograms (26,001 or more pounds) inclusive of a towed unit with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds);
 2. has a gross vehicle weight rating of 11,794 or more kilograms (26,001 or more pounds);
 3. is designed to transport 16 or more passengers, including the driver;
 4. is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103(b)), which requires the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F) or any quantity of a material listed as a select agent or toxin in 42 CFR 73.
5. **Covered Employee.** An employee that is required to obtain or maintain a Commercial Driver’s License.
6. **Illegal Drug.** 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.

7. **Prohibited Conduct.** Prohibited conduct means 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 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. refuse to submit to an alcohol test.
8. **Safety-Sensitive Function.** Safety-sensitive function is 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.

Procedures and Responsibilities.

The University is required to conduct drug and alcohol testing of each applicant for employment or for an employee who is required to obtain or maintain a Commercial Driver's License (CDL) in the following instances: 1) post-accident, random, and reasonable suspicion testing for alcohol, and 2) pre-employment/pre-duty, post-accident, random, and reasonable suspicion testing for controlled substances. 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.

- I. **Required Alcohol Testing.**
 - A. **General:** The Act and this policy prohibit alcohol misuse that could affect performance of a safety-related function. This prohibition extends to:
 1. use of alcohol on the job;

2. use of alcohol during the four hours (in most cases) before performance of a safety-sensitive function;
3. having prohibited concentrations of alcohol in the system (alcohol concentration of 0.02 or greater) while performing safety-sensitive functions;
4. exhibiting behavior and/or appearance characteristic of alcohol misuse or an adverse effect on the employee's ability to perform due to alcohol misuse while performing safety-sensitive functions; or
5. use of alcohol prior to post-accident testing or for up to 8 hours following an accident, whichever comes first. An employee who violates any aspect of this policy is subject to disciplinary action up to and including termination of employment.

Responsible Party: Covered Employee

- B. Post-Accident Testing: As soon as practicable following an accident, each surviving covered employee must be tested for alcohol if: 1) the employee was performing a safety-sensitive function with respect to the vehicle and the accident involved the loss of human life, or 2) the employee receives a citation under state or local law for a moving traffic violation arising out of the accident. A report stating why the test was not promptly administered must be kept in a file if a post-accident test is not administered within two hours of the accident. If not administered within eight hours of the accident, attempts to administer the test must cease and the circumstances resulting in the failure to administer the test must also be kept in a file. The filed reports shall be submitted to the DOT upon request. Post-accident testing conducted by a federal, state, or local official having independent authority to conduct such test satisfies the requirements of the regulations provided 1) such tests conform to applicable requirements, and 2) the results of the test are obtained by the University.

Responsible Party: Unit Supervisor, Risk Management Services

Post-Accident Testing Information Requirement: Prior to performing a safety-sensitive function, each covered employee must be provided by the employing department with post-accident information, procedures, and instructions.

Responsible Party: Covered Employee Department

- C. Random Testing: The University must randomly select covered employees at various times for unannounced alcohol testing. Covered employees must have an equal chance of being tested under the random process used. No fewer than 10 percent of covered employees must be tested annually. Testing must be conducted either while the covered employee is performing, immediately before performing, or immediately after performing a safety-sensitive function.

Responsible Party: Risk Management Services

- D. Reasonable Suspicion Testing: A covered employee must be tested for alcohol misuse when the University has reasonable suspicion to believe that the employee has violated the rules regarding use of alcohol. A determination that reasonable suspicion exists

must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. Reasonable suspicion testing is authorized only if the required observations are made during, just preceding, or just after the period of the work day that the covered employee is performing a safety-sensitive function. The observation and determination that a reasonable suspicion exists must be made by a supervisor trained in detecting the symptoms of alcohol misuse; however, the supervisor making the determination is not to conduct the reasonable suspicion test on that employee.

Responsible Party: Covered Employee Supervisor

- E. Written Record Requirement: A written record of the observations leading to an alcohol reasonable suspicion test must be made and signed by the supervisor or University official who made the observations. This record must be made within 24 hours of the observed behavior or before the results of the controlled substance test are released, whichever is earlier.

Responsible Party: Covered Employee Department and Supervisor

II. Required Controlled Substances Testing.

- A. General: The Act and this policy prohibit a covered employee from reporting or remaining on duty to perform a safety-related function when the individual uses any controlled substance/illegal drug. An exception to this rule applies in the case of an employee whose use of a controlled substance is pursuant to the instructions of a physician who has advised the employee that the substance will not adversely affect his or her ability to safely operate a commercial motor vehicle. An employee who violates any aspect of this policy is subject to disciplinary action up to and including termination of employment.

Responsible Party: Covered Employee

- B. Pre-Employment/Pre-Duty Testing: No covered employee may perform a safety-sensitive function unless he or she has received a controlled substances test result from a medical review officer indicating a verified negative test result. The test may be administered after making a contingent offer of employment, subject to the employee passing the pre-employment test, but prior to the first time the employee performs safety-sensitive functions.

Responsible Party: Covered Employee Department

- C. Casual/Occasional Drivers: If the University uses, but does not employ a driver more than once a year, the University must assure the driver participates in an alcohol and controlled substances testing program(s) that satisfies the DOT regulations or is tested after making a contingent offer of employment, subject to the employee passing the pre-employment test.

Responsible Party: Hiring Department

- D. Post-Accident Testing: As soon as practicable following an accident, the University must test each surviving covered employee for controlled substances if 1) the employee was performing a safety-sensitive function with respect to the vehicle and the accident involved the loss of human life or 2) the employee receives a citation under state or local law for a moving traffic violation arising out of the accident. In the event a required controlled substance test is not administered within 32 hours following the accident, the University must cease attempts to administer the test, and prepare and maintain on file a record stating the reasons the test was not promptly administered. The filed report shall be submitted to the DOT upon request. The results of a urine test for the use of controlled substances conducted by a federal, state, or local official having independent authority to conduct the test shall satisfy the requirements of the regulations if 1) such tests conform to applicable federal, state, or local requirements; and 2) the results of the tests are obtained by the employer.

Responsible Party: Risk Management Services, Covered Employee Department

- E. Post-Accident Information Requirement: Prior to performing a safety-sensitive function, each covered employee must be provided by the employing department with post-accident information, procedures, and instructions.

Responsible Party: Risk Management Services

- F. Random Testing: The University must randomly select covered employees at various times for unannounced alcohol testing. Covered employees must have an equal chance of being tested under the random process used. No fewer than 50 percent of covered employees must be tested annually.

Responsible Party: Risk Management Services

- G. Reasonable Suspicion Testing: A covered employee must be tested for controlled substances when the University has reasonable suspicion to believe that the employee has violated the controlled substances prohibition. A determination that reasonable suspicion exists must be based on specific contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee. The observations may include indications of the chronic and withdrawal effects of controlled substances. Reasonable suspicion testing is authorized only if the required observations are made by a trained supervisor or University official during, just preceding or just after the period of the work day that the covered employee is performing a safety-sensitive function. The supervisor or official making the determination is not to conduct the reasonable suspicion test on that employee.

Responsible Party: Covered Employee Supervisor

- H. Written Record Requirement: A written record of the observations leading to a controlled substance reasonable suspicion test must be made and signed by the supervisor or University official who made the observations. This record must be made

within 24 hours of the observed behavior or before the results of the controlled substance test are released, whichever is earlier.

Responsible Party: Covered Employee Supervisor

- III. Test Administration. Risk Management Services is responsible for coordination of random test administration and receipt of test results. The employing department is responsible for coordination of pre-employment/pre-duty testing. A covered employee scheduled for pre-employment/pre-duty testing is required to report as scheduled to a testing site designated by the University. A covered employee who is to be tested for reasonable suspicion must be transported to the testing site by a designated departmental supervisor or University official. Post-accident testing administered by law enforcement.

Responsible Party: Risk Management Services, Covered Employee Department

- IV. Information, Training and Referral.

- A. Information: The University must provide specific educational materials that explain the requirements of this policy and procedures and be prepared to revise as needed under the supervision of Risk Management Services. Employing departments must maintain a record that such materials have been provided to each covered employee.

Responsible Party: Risk Management Services, Covered Employee Departments

- B. Training: Supervisors who are designated to determine whether reasonable suspicion exists to require an alcohol test must receive at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse. Supervisors who are designated to determine whether reasonable suspicion exists to require a controlled substance test must receive at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable use of controlled substances. Information on post-accident testing procedures will be given to the supervisors for distribution to covered employees.

Responsible Party: Covered Employee Department

- C. Referral: The Act provides that an opportunity for treatment must be made available to covered employees. The University is not required to provide or to pay for rehabilitation or to hold a job open for an employee with or without salary. An employee who engages in prohibited conduct under this policy is subject to disciplinary action up to and including termination. However, a covered employee who has engaged in prohibited conduct must be advised by their supervisor or an appropriate University official of the available resources for evaluation and treatment including names, addresses and telephone numbers of substance abuse professionals, counseling centers, and treatment programs.

Responsible Party: Covered Employee Supervisor

V. Record Retention and Confidentiality Requirements. The University is required to maintain records of its alcohol misuse prevention and controlled substance programs in a secure location with controlled access and retention as follows (the designated repository for records retention is Risk Management Services):

A. Five-Year Retention Requirement: records of any employee alcohol test results indicating an alcohol concentration of 0.02 or greater; records of any employee verified positive controlled substance test results; documentation of refusals to take required alcohol or controlled substance tests; alcohol test equipment calibration documentation; documentation of employee evaluations and referrals; and records related to the administration of the alcohol and controlled substances testing programs.

Responsible Party: Risk Management Services

B. Two-Year Retention Requirement: all records related to collection processes and training.

Responsible Party: Risk Management Services

C. One-Year Retention Requirement: records of negative alcohol test results; records of negative and canceled controlled substance test results.

Responsible Party: Risk Management Services

VI. Compliance and Coordination with Applicable Statutes. The Act does not preempt consistent state laws or any right, benefit, privilege or remedy extended to covered employees under other federal statutes. In particular, efforts to implement and comply with the DOT alcohol and controlled substance testing rules may implicate a covered employee's rights under any one (or all) of the following federal statutes:

- A. Drug-Free Workplace Act
- B. Fair Labor Standards Act
- C. Americans with Disabilities Act
- D. Rehabilitation Act of 1973
- E. Family and Medical Leave Act
- F. Age Discrimination in Employment Act
- G. Employment Retirement Income Security Act

References and Cross-references.

Omnibus Transportation Employee Testing Act of 1991.

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

Department of Transportation 49 CFR Part 382, Controlled Substances and Alcohol Use and Testing

Policy No. 05.004, Illegal Drugs and Alcohol

Forms and Tools.

None.

Approved: 12/01/1995

Effective:

Revised: 2/02; 10/11