

## UNIVERSITY RULE

### **34.02.01.M2 Substance Abuse Prevention for DOT-Regulated Employees**

*Approved January 13, 1999*

*Revised July 12, 2011*

*Revised July 8, 2016*

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#### **Rule Statement**

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Texas A&M University is committed to protecting the safety, health, and well-being of its employees, students, and all people who come into contact with its property and facilities. Recognizing that drug and alcohol abuse poses a direct and substantial threat to this goal, Texas A&M is committed to providing a drug-free working environment for all of its employees. Drivers covered by this rule must also follow University Rule 34.02.01.M1 and state and federal regulatory testing requirements.

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#### **Reason for Rule**

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This rule sets forth the requirements of the U.S. Department of Transportation (DOT) drug and alcohol-testing requirements for covered drivers as defined in 49 CFR Part 382. Texas A&M reserves the right to change these requirements as required by law or as it otherwise deems appropriate with or without notice to employees. Drivers covered by this Rule must also comply with University Rule 34.02.01.M1. However, in the event of any inconsistencies with the rules or procedures, the federal requirements in this rule shall apply.

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#### **Definitions**

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1. Commercial Motor Vehicle (CMV)
  - 1.1 A commercial motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:
    - 1.1.1 has 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;
    - 1.1.2 has a gross vehicle weight rating of 26,001 or more pounds;
    - 1.1.3 is designed to transport 16 or more passengers, including the driver; or
    - 1.1.4 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)) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR Part 172, Subpart F).

2. Safety-Sensitive Function(s)

2.1 Safety-sensitive function means all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions include:

2.1.1 all time spent at the driving controls of a CMV in operation;

2.1.2 all time waiting to be dispatched to drive a CMV, unless the driver has been relieved from duty;

2.1.3 all time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to drive a CMV, or in giving or receiving receipts for shipments loaded or unloaded;

2.1.4 all time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth;;

2.1.5 all time inspecting equipment or otherwise inspecting, servicing or conditioning any CMV at any time;

2.1.6 all time repairing or obtaining assistance, or remaining in attendance upon a disabled CMV.

3. On-Duty and Duty

3.1 “On-duty” and “duty” include all and any time spent engaging in safety-sensitive functions. It also includes all time performing any other work for Texas A&M.

4. Refusal to Submit and Refuse to Submit

4.1 A “refusal to submit” or to “refuse to submit” to testing means:

4.1.1 Failure to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, after being directed to do so;

4.1.2 Failure to remain at the testing site until the testing process is complete. Provided, that an employee who leaves the testing site before the testing process commences a pre-employment test is not deemed to have refused to test;

- 4.1.3 Failure to provide a urine specimen for any drug test required by this rule. Provided, that an employee who does not provide a urine specimen because he or she has left the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test;
- 4.1.4 In the case of a directly observed or monitored collection in a drug test, failure to permit the observation or monitoring of the driver's provision of a specimen;
- 4.1.5 Failure to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
- 4.1.6 Failure to provide adequate breath for alcohol testing, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
- 4.1.7 Failure or declination to take a second test the employer or collector has directed the driver to take;
- 4.1.8 Failure to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process); or
- 4.1.9 Is reported by the medical review officer as having a verified adulterated or substituted test result.

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## **Official Rule and Responsibilities**

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### **1. SCOPE**

#### **1.1 This rule addresses:**

1.1.1 Alcohol use and abuse;

1.1.2 The illegal use, sale, or possession of drugs; and

1.1.3 The misuse of drugs including over-the-counter and prescription drugs.

1.2 This rule describes the requirements of the U.S. Department of Transportation's mandatory drug and alcohol-testing program for covered drivers, and the consequences of violating university rules and/or failing a DOT-required drug and/or alcohol test. Any covered driver who becomes ineligible to drive because of a positive drug or alcohol test also will be considered to be in violation of

University Rule 34.02.01.M1, and may be subject to discipline, up to and including termination, in addition to and independent of any sanction imposed by the DOT Rules. Any questions you have regarding this rule should be directed to Human Resources.

- 1.3 Drivers include individuals operating a CMV as defined in Definitions, section 1.1.
- 1.4 In addition, Texas A&M prohibits the use of alcohol on the job or which impairs performance on the job to any extent.
- 1.5 Any violation of this rule shall result in disciplinary action up to and including termination and possible referral to law enforcement personnel for criminal prosecution. Job applicants in violation of this policy shall be denied employment. For more information, please refer to University Rule 34.02.01.M1.
- 1.6 A driver who becomes unqualified to drive for any reason (including, but not limited to, suspension or revocation of the commercial driver's license, insurability, and/or failure to pass a medical or any written or driving examination), may be terminated.

## 2. PROHIBITIONS AND CONSEQUENCES

- 2.1 A violation of this rule will result in:
  - 2.1.1 immediate removal from safety-sensitive functions;
  - 2.1.2 referral to a substance abuse professional as addressed in Section 5; and/or
  - 2.1.3 disciplinary action as addressed in Section 1.5.
- 2.2 The DOT regulations and Texas A&M prohibit the following:
  - 2.2.1 Alcohol concentration: No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of .04 or greater;
  - 2.2.2 Alcohol possession: No driver shall be on duty or operate a CMV while the driver possesses wine, beer or distilled spirits;
  - 2.2.3 On-duty use: No driver shall use alcohol while performing safety-sensitive functions;
  - 2.2.4 Pre-duty use: No driver shall perform safety-sensitive functions within four (4) hours after using alcohol;
  - 2.2.5 Use following an accident: No driver who is required to take a post-accident

test as set forth below shall use alcohol for eight (8) hours following the accident, or until after they undergo a post-accident alcohol test, whichever occurs first;

- 2.2.6 Refusal to submit to testing: No driver shall refuse to submit to an alcohol or controlled substance test required by this rule;
- 2.2.7 Controlled substance use: No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, as defined by the Federal DOT Regulations, except when the use is pursuant to the instructions of a licensed practitioner who is familiar with the driver's medical history and who has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle. Drivers must inform their supervisors of any therapeutic drug use;
- 2.2.8 Controlled substances testing: No driver shall report for duty, remain on duty or perform a safety-sensitive function, if the driver tests positive or has adulterated or substituted a test specimen for controlled substances.

### 3. TESTING: WHEN TESTING IS REQUIRED AND CONSEQUENCES OF REFUSAL

- 3.1 Texas A&M and federal regulations require drivers to submit to alcohol and controlled substances tests administered in accordance with the regulations. A refusal to submit to an alcohol or a controlled substances test is a violation of the federal regulations and of University Rules resulting in automatic termination.
- 3.2 The regulations and Texas A&M require testing in the following six circumstances:
  - 3.2.1 Pre-employment/Testing: Prior to the first time a driver performs safety-sensitive functions, the driver shall undergo testing for controlled substances. The only exception to the pre-employment testing requirement is for drivers who have participated in a drug testing program consistent with this rule within the previous 30 days, has been tested within 6 months prior to the present application, participated in random testing 12 months prior to the application, and have not violated any DOT regulations regarding alcohol or controlled substances. For job applicants, pursuant to Texas A&M policy, testing positive will result in the rejection of the employment application.
  - 3.2.2 Post-Accident Testing: Post-accident testing for alcohol and controlled substances is required for drivers if the accident involves a fatality, regardless of fault; if the employee receives a traffic citation and injury occurs to anyone sufficient to require medical attention away from the accident site; if the driver receives a citation and damage occurs to any vehicle requiring it to be towed from the accident site; or if required under state or local law for a moving traffic violation arising from the accident.

- 3.2.2.1 Post-accident testing will be conducted in accordance with federal regulatory requirements and Human Resources supervisory guidelines.
- 3.2.2.2 Independent of the federal regulations, Texas A&M reserves the right to test employees after accidents even if the accident did not involve a fatality or a moving traffic violation citation, as part of its investigation of the accident.
- 3.2.2.3 The testing must be done as soon as practicable following the accident, but in no instance not later than two hours following the accident for alcohol testing or 32 hours following the accident for controlled substances testing.
- 3.2.2.4 Each surviving driver who was performing safety-sensitive functions with respect to the vehicle must be tested.
- 3.2.2.5 A driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed by Texas A&M to have refused to submit to testing.

Specific instructions regarding post-accident testing are listed in [Standard Administrative Procedure 34.02.01.99.M2.01 Post-Accident Testing Instructions](#).

### 3.2.3 Random Testing:

- 3.2.3.1 Drivers will be selected for random alcohol and controlled substances testing using a scientifically valid method such as a random number table or computer-based random number generator that is matched with a driver's social security number, payroll identification number or other comparable identifying numbers. Each driver selected shall have an equal chance of being tested each time selections are made. Accordingly, even if a driver has been randomly tested within the last year, the driver can be selected again for random testing in that same year. Random tests are unannounced and will be spread reasonably throughout the calendar year.
- 3.2.3.2 When a driver is notified that they have been selected to take a random drug test, the driver must proceed to the test site immediately; provided, however, that if the driver is performing a safety-sensitive function at the time of notification, Texas A&M shall ensure that the driver ceases to perform the safety-sensitive function and then proceeds to the test site as soon as possible. A driver will only be tested for alcohol while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

### 3.2.4 Reasonable Suspicion Testing:

3.2.4.1 Required observations for alcohol and/or controlled substances reasonable suspicion testing shall be made by a supervisor or Texas A&M official who is trained in accordance with 49 CFR, 382.603.

3.2.4.2 The decision to test an employee for alcohol and controlled substances testing will be in accordance with System Regulation 34.02.01, Section 5.

3.2.4.3 Concerning alcohol: Texas A&M must and will require a driver to submit to an alcohol test when Texas A&M has reasonable suspicion to believe that the driver has violated the prohibitions set forth above concerning alcohol, except for prohibition in Section 2.2.2 regarding alcohol possession. The determination that reasonable suspicion exists will be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. Alcohol testing is authorized by the Executive Director of Human Resources, only if the reasonable suspicion observations are made during, just preceding, or just after any period of the work day during which the driver is required to be in compliance with the drug and alcohol policies and procedures. A driver may be directed by Texas A&M to undergo reasonable suspicion testing only while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

An alcohol test should be administered within two (2) hours following the determination of reasonable suspicion. If it cannot be done within two (2) hours, the supervisor or manager must document why the test was not promptly administered but shall still arrange for testing within eight (8) hours after the determination of reasonable suspicion.

If Texas A&M has a reasonable suspicion that a driver may have violated the provisions on alcohol use, but an alcohol test cannot be performed immediately, Texas A&M must not and will not permit the driver to perform safety-sensitive functions until:

3.2.4.3.1 24 hours have passed from the time of the reasonable suspicion determination; or

3.2.4.3.2 an alcohol test is administered and the driver's alcohol concentration measures less than 0.02.

Within 24 hours of requesting testing or before the results are

released, the person who made the observations, etc. shall make and sign a written record of the observations leading to a alcohol reasonable suspicion test.

3.2.4.4 Concerning Controlled Substances: Texas A&M must and will require a driver to submit to a controlled substances test when Texas A&M has reasonable suspicion to believe that the driver has violated the prohibitions concerning controlled substances. The determination that reasonable suspicion exists must be based on specific, contemporaneous, articulable observation concerning the appearance, behavior, speech or body odors of the driver, including behavior or symptoms which indicate chronic and/or withdrawal effects of the use of controlled substances. Within 24 hours of requesting testing or before the results are released, the person who made the observations, etc. shall make and sign a written record of the observations leading to a controlled substance reasonable suspicion test.

3.2.5 Return-To-Duty Testing:

3.2.5.1 Concerning alcohol: Before a driver can return to safety-sensitive functions, after engaging in prohibited conduct concerning alcohol, the driver shall successfully complete evaluation, treatment as approved by Texas A&M and in accordance with regulations and rules, and testing with the result indicating an alcohol concentration of less than .02.

3.2.5.2 Concerning controlled substances: Before a driver can return to safety-sensitive functions after engaging in prohibited conduct concerning controlled substances, the driver shall successfully complete evaluation, treatment as approved by Texas A&M and in accordance with the regulations and rules and testing with the result indicating a verified negative result for controlled substance use.

3.2.6 Follow-Up Testing: Following a determination that a driver is in need of assistance in resolving controlled substances and/or alcohol problems, when and if a driver is permitted to return to a safety-sensitive position the driver will be required to undergo unannounced follow-up alcohol and/or controlled substances testing, as directed by a substance abuse professional. Follow-up alcohol testing shall be conducted only when the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing safety-sensitive functions.

4. TESTING: CONSEQUENCES OF A POSITIVE RESULT

4.1 Any driver who tests positive for alcohol at a level of .04 or greater or tests positive for controlled substances may be immediately terminated. If an employee is not

terminated, the employee may be permitted to return to work only if:

- 4.1.1 the employee successfully completes a program of evaluation and treatment required by the regulations and rules and as approved by Texas A&M;
  - 4.1.2 the employee is tested and test results are negative;
  - 4.1.3 the employee presents to Texas A&M a currently valid commercial driver's license and medical examiner certificate; and
  - 4.1.4 the employee signs the Job Jeopardy Return-to-Work Agreement provided by Texas A&M with said Agreement including requirements for random testing for at least one year up to a maximum of five years, and for discharge and ineligibility for reinstatement if the driver tests positive a second time or refuses to submit to testing. The Job Jeopardy Return-to-Work Agreement will contain other requirements and provisions at Texas A&M's discretion. Any cost of rehabilitation over and above that paid for by an applicable healthcare plan must be borne by the employee.
- 4.2 The possibility of returning to work described above does not extend to a driver who:
- 4.2.1 refused to submit to testing;
  - 4.2.2 possessed a prohibited and illegal substance while on the job; or
  - 4.2.3 tested positive in a post-accident situation.

## 5. EMPLOYEE ASSISTANCE

- 5.1 If an employee is concerned about their use of alcohol or controlled substances or the use of alcohol or controlled substances by a co-worker, it is the employee's responsibility to seek assistance from management or from any assistance programs available in the community.
- 5.2 When a driver has engaged in prohibited conduct, the driver will be referred to a substance abuse professional for evaluation. The substance abuse professional will determine what assistance, if any, the driver needs in resolving problems associated with alcohol misuse and controlled substances use. Each driver identified as needing assistance shall be monitored by a substance abuse professional to determine that the driver has properly followed any rehabilitation program as prescribed by the professional.
- 5.3 If the driver is reinstated by Texas A&M or seeks work performing safety-sensitive functions for another company, they shall be subject to unannounced follow-up alcohol and controlled substances tests administered by Texas A&M or the new employer following the driver's return to duty as required by DOT regulations. The number and frequency of such follow-up tests will be as directed by the substance

abuse professional and shall consist of at least 6 tests in the first twelve months following the driver's return to duty. The driver may undergo return-to-duty and follow-up testing for both alcohol and controlled substances as necessary for that particular driver. Follow-up testing will not be required for more than sixty (60) months (5 years) from the date of the driver's return to duty.

- 5.4 When referral to a substance abuse professional is required by the regulations (i.e., when a driver has engaged in prohibited conduct) and the driver is still employed, the driver must receive assistance from a professional approved by Texas A&M. If the substance abuse professional determines that a driver requires assistance, the driver will be referred to a person or organization independent from the substance abuse professional. However, the driver will be required to complete any recommended course of treatment to the satisfaction of both the substance abuse professional and Texas A&M.
- 5.5 The employee assistance, referral and evaluation discussed in this section do not apply to applicants for employment. Rather, this section applies only to current employees, and this section does not in any way change alter, or modify Texas A&M's independent right to discipline any employee up to and including immediate termination.

## 6. OBLIGATION TO CONTACT PRIOR EMPLOYERS

- 6.1 Before a driver will be permitted to perform any safety-sensitive functions for the first time for Texas A&M, Texas A&M is obliged to obtain information regarding whether the driver has, in the past 2 years, tested positive for controlled substances, had an alcohol test with a concentration of .04 or greater, refused to be tested, or had other violations of DOT drug and alcohol testing regulations by contacting each of the driver's previous DOT-regulated employers who have employed the applicant in the past 2 years.
- 6.2 Texas A&M cannot use a driver to perform safety-sensitive functions if Texas A&M obtains information from a prior employer of the driver's positive alcohol test with a concentration result of .04 or greater, a verified positive controlled substances test result, or a refusal to be tested, unless the driver also provides information regarding the successful evaluation and completion of treatment recommended by a substance abuse professional, as well as confirmation that the driver successfully completed any required return-to-duty tests.
- 6.3 In order for Texas A&M to obtain the required information, the driver will be required to complete and sign a written request and consent to release information for each of the driver's previous employers during the preceding two year period. Independent of the regulations and as a matter of University policy, if Texas A&M does not receive the required information from previous employers, any offer of employment will be rescinded, or if the driver has commenced employment, the driver's employment will be terminated.
- 6.4 Texas A&M is obliged to provide similar information to the driver's future

employers and Texas A&M requires the driver to complete and sign an authorization for the release of information in order to permit University to release the information to future employers.

## 7. CERTIFICATE OF RECEIPT

- 7.1 The regulations require that each driver sign a statement certifying that the driver has received a copy of this Rule. Accordingly, the driver must sign the Certificate (attached as [Appendix A](#)) and return the original of the Certificate to the hiring department. The driver may keep a copy of the Certificate for his/her own records, if desired. Required information is also provided in the Employee Drug and Alcohol Abuse and Rehabilitation Program brochure distributed annually to all employees.

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### Related Statutes, Policies, Regulations and Rules

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Policy 34.02: *Drug and Alcohol Abuse*

<http://policies.tamus.edu/34-02.pdf>

Regulation 34.02.01: *Drug and Alcohol Abuse and Rehabilitation Programs*

<http://policies.tamus.edu/34-02-01.pdf>

Rule 34.02.01.M1: *Substance Abuse Prevention*

<http://rules-saps.tamu.edu/PDFs/34.02.01.M1.pdf>

Standard Administrative Procedure 34.02.99.M2.01: *Post-Accident Testing Instructions*

<http://rules-saps.tamu.edu/PDFs/34.02.99.M2.01.pdf>

Federal Regulation 49 CFR Part 382

49 CFR Part 40, Subpart O

49 CFR Part 40, Subpart B

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### Contacts

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For more information or clarification on this rule, contact Employee Assistance Program, at (979) 845-3711, or by email at [eap@tamu.edu](mailto:eap@tamu.edu).

**OFFICE OF RESPONSIBILITY:** [Human Resources](#)