

34.02.01 Drug and Alcohol Abuse and Rehabilitation Programs

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Regulation Statement

The Texas A&M University System (system) and each member is committed to a drug-free environment and protecting the safety, health and well being of all employees and students.

Reason for Regulation

The use of illicit drugs and alcohol may have a detrimental impact on the system and each member in achieving their missions. This regulation provides guidelines for implementation of a drug and alcohol abuse awareness, prevention and intervention program for students and employees in accordance with the Drug-Free Workplace Act of 1988, the Drug-Free Work Force Rules for Department of Defense (DOD) Contractors, and the Drug-Free Schools and Communities Act of 1989.

Procedures and Responsibilities

1. ADMINISTRATION

The Office of General Counsel (OGC) must be informed by the appropriate administrator of possible violations of this regulation and the advice of an OGC attorney must be secured before testing anyone due to reasonable suspicion of drug or alcohol use or abuse. Advice of the OGC is not needed for required testing as described in Section 4, and the OGC may waive the requirement to seek OGC's advice for reasonable suspicion testing when a member shows documented evidence of training for administrators and supervisors in alcohol and drug awareness.

2. MEMBER RULE

The chief executive officer of each member shall establish a rule for the implementation of System Policy 34.02, *Drug and Alcohol Abuse*, and this regulation. Requirements of the Drug-Free Workplace Act of 1988, the Drug-Free Schools and Communities Act of 1989 and the Drug-Free Work Force Rules for Department of Defense (DOD) Contractors and the requirements of the Department of Transportation or other regulatory bodies and applicable state laws must be included as applicable for students and employees.

3. ALCOHOL AND DRUG-FREE AWARENESS AND PREVENTION PROGRAM

- 3.1 In accordance with the Drug-Free Schools and Communities Act of 1989, each member shall develop and implement an alcohol and drug-free awareness and prevention program (program) for students and employees. Programs must conform to system policies and regulations as well as related state and federal laws.
- 3.2 Annually, each member must notify, in writing, each employee and each student of:
- (a) the standards of conduct that prohibit the unlawful manufacture, distribution, dispensation, use and possession of illicit drugs and alcohol by students and employees on system property or as part of any system activity;
 - (b) a description of the applicable legal sanctions under local, state or federal law for the unlawful manufacture, distribution, dispensation, use or possession of illicit drugs or alcohol;
 - (c) a description of the health risks associated with the use of illicit drugs and alcohol;
 - (d) a description of drug or alcohol counseling, treatment, rehabilitation, re-entry or employee assistance programs that are available to students and/or employees;
 - (e) a clear statement that the member, consistent with local, state or federal law, will impose sanctions against a student or employee who violates the standards of conduct. The statement must include a description of the possible sanctions; and
 - (f) a description of the member's program, including alternative support, education and re-entry programs for students who are expelled as a result of violating standards required by these minimum requirements.
- 3.3 As required by federal law, each member must conduct a biennial review of its program and report:
- (a) the effectiveness of the program;
 - (b) the consistency of sanction enforcement;
 - (c) the number of drug and alcohol-related violations and fatalities that occur on system property or at system activities and reported to campus officials, and the number and type of sanctions that are imposed by the member for such reported violations and fatalities on system property or at system activities; and
 - (d) whether any changes to the program are needed and implement any such changes.
- 3.4 Each member shall, upon request, make available to the U.S. Secretary of Education or designee, other applicable governmental agencies and the general public, all documents outlined in Section 3.1, as well as the biennial review.
- 3.5 Members must certify the accessibility of a drug abuse prevention program for officers, employees and students of the member, as required under 20 U.S.C.A. § 1094.

4. EMPLOYEE DRUG TESTING

- 4.1 Department of Defense

- 4.1.1 In accordance with the Drug-Free Workplace Act of 1988 and the Drug-Free Work Force Rules for Department of Defense (DOD) Contractors, government contractors shall institute and maintain a program for achieving the objective of a drug-free work force. The program shall include employee assistance programs emphasizing education, counseling and rehabilitation; training to assist in identifying and addressing illicit drug use; provisions for self-referrals as well as supervisory referrals for treatment; and procedures for identifying illicit drug users, including a random drug testing program for employees in sensitive positions.
- 4.1.2 As a condition of employment, employees on federal governmental grants or contracts must abide by the required notification statement and must report any criminal drug statute conviction for a violation occurring in the workplace or on system business to their employer no later than five days after the conviction. The employer, in turn, must notify the contracting federal agency within 10 days after receiving notice from an employee or otherwise receiving actual notice of such conviction and, within 30 days, must impose sanctions on the employee involved. Sanctions may take the form of personnel actions against the employee, up to and including termination, or requiring the employee to satisfactorily participate in an approved drug abuse assistance or rehabilitation program.
- 4.1.3 Testing of an employee in a DOD-funded sensitive position will be undertaken under the following circumstances: (1) when there is reasonable suspicion that an employee uses illicit drugs, (2) when an employee has been involved in an accident or unsafe practice, (3) as part of or as a follow-up to counseling or rehabilitation for illicit drug use or (4) as part of a voluntary employee drug testing program.

4.2 Department of Transportation

Drug testing of employees required to have commercial driver's licenses must comply with Federal Highway Administration and Department of Transportation regulations and will be conducted in the following situations: (1) pre-employment, (2) post-accident, (3) reasonable suspicion, (4) random and (5) return-to-duty and follow-up.

5. REASONABLE SUSPICION OF EMPLOYEE DRUG OR ALCOHOL ABUSE

- 5.1 If a supervisor reasonably suspects that use of a controlled substance or alcohol has resulted in absenteeism, tardiness or impairment of work performance or is the cause of workplace accidents, the supervisor shall immediately notify the appropriate department head or designated administrator. Upon direction from the department head or designated administrator, the supervisor or designated administrator shall discuss with the employee the suspected alcohol or drug-related problem(s). The employee shall be advised of available alcohol and drug counseling, rehabilitation or employee assistance programs, and the terms of any applicable disciplinary sanctions. The employee may be required to participate in an assistance program and be subject to discipline (up to and including termination of employment) if he or she rejects participation in the program. All meetings between the employee and the supervisor or designated administrator to address the suspected alcohol or drug-related problem and/or its resolution shall be documented in a memorandum to the record and filed in the employee's personnel file.
- 5.2 If discussion and/or participation in available alcohol or drug counseling, rehabilitation or the employee assistance program fails to resolve the suspected alcohol or drug-related problem(s) or if the employee fails to meet the terms of any applicable disciplinary

sanctions, the employee may be subject to disciplinary action up to and including termination.

- 5.3 Any disciplinary action will be governed by system policies on discipline and dismissal and academic freedom, responsibility and tenure. A record of the action will be placed in the employee's personnel file.
- 5.4 Testing of employees other than those occupying DOD-funded sensitive positions or those required to have a commercial driver's license may be undertaken only when there is reasonable suspicion that the employee is under the influence of alcohol or illicit drugs while on the job and the employee's job performance has been affected by the use of alcohol or illicit drugs. The decision to test an employee in these circumstances will be made by the appropriate chief executive officer or designee with the advice of the OGC. The employee should be informed that a refusal to submit to a test, combined with a reasonable suspicion of usage, may be sufficient basis for termination.

6. TESTING PROCEDURES

The expense of the screening and any retest will be borne by the member. The screening will be kept confidential, with the results being reported to the employee and the appropriate senior-level administrator as soon as they are available. Any written documentation will be kept in the employee's confidential medical file.

6.1 Drug Testing

- 6.1.1 Prior to the administration of a drug test, the appropriate administrator or supervisor must explain the drug testing procedures to the employee and arrange for a member employee(s) to transport and accompany the employee to a hospital or clinic for the taking of a specimen for screening purposes. If the member has laboratory or medical facilities with personnel trained for such testing, those facilities may be used if there are adequate chain-of-custody procedures established for the samples, and precautions are taken to guarantee the integrity of the testing against tampering or substitution.
- 6.1.2 Before the specimen is taken, the employee will be asked to sign a consent form agreeing to the taking of a specimen for testing purposes. The signed form will be required by the hospital or clinic. The employee may be asked to list any medications being taken. The employee will have a reasonable opportunity to rebut or explain a positive test result, including an independent retest of the sample.

6.2 Alcohol Testing

Alcohol testing shall be conducted using an Evidential Breath Testing Device (EBT) that has been approved by the National Highway Traffic Safety Administration.

Related Statutes, Policies, or Requirements

[20 U.S.C. § 1011i](#)

[20 U.S.C. § 1094](#)

21 U.S.C.A. § 812, [The Controlled Substances Act](#)

[41 U.S.C. §§ 701-707, The Drug-Free Workplace Act of 1988](#)

[34 C.F.R. 86 \(Authority: 20 U.S.C. 1145g\), The Drug-Free Schools and Communities Act of 1989](#)

[48 C.F.R. 252.223-7004, The Drug-Free Work Force Rules for Department of Defense \(DOD\) Contractors](#)

[Texas Health and Safety Code, Chapter 481, Texas Controlled Substances Act](#)

[System Policy 34.02, Drug and Alcohol Abuse](#)

Definitions

Alcohol – any beverage containing more than one-half of one percent of alcohol by volume, which is capable of use for beverage purposes, either alone or when diluted.

Alcohol abuse – the excessive use of alcohol in a manner that interferes with (1) physical or psychological functioning; (2) social adaptation; (3) educational performance or (4) occupational functioning.

Controlled substance – a substance listed in schedules I through V of the Controlled Substances Act (21 U.S.C.A. 812) or whose possession, sale or delivery results in criminal sanctions under the Texas Controlled Substances Act (Texas Health and Safety Code, Chapter 481). In general, controlled substances include all prescription drugs, as well as those substances for which there is no generally accepted medicinal use (e.g., heroin, LSD, marijuana, etc.), and substances that possess a chemical structure similar to that of a controlled substance (e.g., designer drugs). The term does not include alcohol.

Criminal drug statute – a criminal statute involving the manufacture, distribution, dispensation, use or possession of any controlled substance.

Criminal drug statute conviction – a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the state or federal criminal drug statutes.

Drugs or other controlled substances – any substances capable of altering an individual's mood, perception, pain level or judgment.

Employee in a sensitive position – an employee who has been granted access to classified information or an employee in another position determined by appropriate administrative personnel to involve national security, health or safety concerns, or functions requiring a high degree of trust and confidence.

Illicit drug or chemical substance – (a) any drug or chemical substance, the manufacture, distribution, dispensation, use or possession of which is illegal under any state or federal law or (b) one that is legally obtainable but has not been legally obtained. The term includes prescribed drugs not legally obtained and prescribed drugs not being used for prescribed purposes.

Prescribed drug – any substance prescribed for individual consumption by a licensed medical practitioner. It includes only drugs that have been legally obtained and are being used for the purpose for which they were prescribed or manufactured.

Reasonable suspicion – shall be established by (1) observation of the actions/behaviors of the individual; (2) a supervisor or other reliable individual witnessing possession or use; or (3) any other legal measure used for alcohol or drug detection.

Sanctions – may include completion of an appropriate rehabilitation or assistance program, suspension or expulsion from school, suspension or termination from employment, other disciplinary action or referral to authorities for prosecution. If an employee has been convicted of a criminal drug statute, sanctions must be imposed within 30 days.

Workplace – a site for the performance of work at which employees are prohibited from engaging in the unlawful manufacture, distribution, dispensation, use or possession of a controlled substance.

Member Rule Requirements

A rule is required to supplement System Policy 34.02, *Drug and Alcohol Abuse*, and this regulation. See Section 2.

Contact Office

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