

DRUG AND ALCOHOL TESTING OF SCHOOL BUS DRIVERS ADMINISTRATIVE PROCEDURE

PURPOSE

The purpose of this rule is to provide guidance to supervisors and notice to drivers concerning the implementation of alcohol and controlled substance testing required by federal regulations. It does not attempt to provide a complete overview of or to limit or modify federal regulations, which should be referred to for more detailed information concerning testing procedures and consequences. The text of the federal regulations is attached and should be consulted where questions as to implementation of this rule arise.

I. APPLICABILITY

All persons operating a commercial motor vehicle in commerce in any state and subject to the commercial driver's license requirement mandated under both federal and state laws, including the Omnibus Transportation Employee Testing Act of 1991, shall be subject to the drug and alcohol testing provisions herein contained.

II. IMPLEMENTATION

The Superintendent shall be responsible for implementing a drug and alcohol-testing program which complies with procedures set forth in Title 49, Parts 40, 382, 390 and 395 of the Federal Code of Regulations. Such testing program shall include pre-employment/pre-duty drug testing, return-to-duty and follow-up testing. This school unit shall provide parties subject to testing with written notice of materials and information available to them as required by Part 382.

Bid specifications and contracts for transportation shall require that the contractor establish a drug and alcohol-testing program which complies with federal regulations and that is acceptable to the Board.

III. CONTROLLED SUBSTANCES

References to tests in these rules include both drug and alcohol tests unless the context specifies otherwise. The terms "drugs" and "controlled substances" are interchangeable and have the same meaning. Drugs refer to marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines (including methamphetamines).

Drivers shall inform their supervisors if at any time they are using a controlled substance that their physician has prescribed for therapeutic purposes. Such substance may be used in conjunction with duty only if the physician has advised the driver that it will not adversely affect his/her ability to safely operate a commercial motor vehicle.

IV. III. SAFETY-SENSITIVE FUNCTION

Safety-sensitive function(s) in this policy/procedure refer to functions defined in 49 CFR §382.107 and §395.2 (On-Duty Time, paragraphs (1) through (6))

V. DRIVERS SUBJECT TO TESTING

All drivers who must have a Commercial Drivers License to perform their duties will be subject to the alcohol and/or drug testing as outlined in this rule and required by 49 CFR, Part 382.

VI. COMPLIANCE WITH RULE AND REGULATION

All employees must comply with this rule and federal regulations during any portion of the work day that they perform any duties relating to driving, including, but not limited to: driving; waiting to be dispatched; inspecting and servicing equipment; supervising, performing or assisting in loading and unloading; repairing or obtaining and waiting for help with a disabled vehicle; performing driver requirements related to accidents.

VII. PROHIBITED CONDUCT**A. Drivers shall not:**

1. Report to or remain on duty with alcohol concentration of 0.02 or greater;
2. Possess any alcohol while on duty;
3. Use any alcohol within four hours before going on duty;
4. Use any alcohol while on duty;
5. Use any alcohol for eight (8) hours after an accident which will require the driver to be tested for alcohol, or until tested after such an accident, whichever occurs first;
6. Refuse to submit to a required alcohol and/or controlled substances test;
7. Report to or remain on duty when using any controlled substance, except when used under a physician's orders and the physician has informed the driver that the use will not affect the safe operation of a vehicle.
8. Report to or remain on duty if he/she has tested positive for controlled substance.

VIII. REQUIRED TESTS

- A. PRE-EMPLOYMENT:** Drug testing will be administered before the first time a driver performs any safety-sensitive functions for RSU 26. The test will be required of an applicant only after he/she has been offered a position. Employment is conditional upon receiving verified negative drug test results.
- B. RANDOM:** Tests shall be conducted on a random basis at unannounced times throughout the year. Random tests for alcohol shall be conducted just before, during or after the performance of safety-sensitive functions. The number of random alcohol tests annually will be at least 25% of the average number of driver positions. The number of random drug tests annually will be at least 50% of the average number of driver positions. Drivers will be selected by a scientifically valid random process, and each driver shall have an

equal chance of being tested each time selections are made.

- C. POST-ACCIDENT: Drivers will be tested as soon as practicable after any accident which:

1. Involves the loss of human life; or
2. Involves the driver receiving a citation for a moving traffic violation as a result of the accident.

- D. REASONABLE SUSPICION: Tests shall be conducted when a properly trained supervisor or RSU 26 official has reasonable suspicion that the driver has violated the alcohol or drug prohibitions as provided by this rule, except Section VI.2. This reasonable suspicion will be based on specific observations concerning the driver's appearance, behavior, speech or body odors. The observation may include indications of the chronic and withdrawal effects of controlled substances.

Alcohol tests will be authorized for reasonable suspicion only if the required observations are made during, just before, or just after the period of the work day when the driver must meet alcohol prohibitions. If an alcohol test is not administered within two (2) hours of a determination of reasonable suspicion, RSU 26 will prepare and maintain a record explaining why this was not done. Attempts to conduct alcohol tests will terminate after eight (8) hours, and RSU 26 shall record the reasons for not administering the test.

A supervisor or RSU 26 official who makes a finding of reasonable suspicion also must make a signed written record of his/her observations leading to a reasonable suspicion drug or alcohol test. Such written record must be completed within 24 hours of the observed behavior or before the results of the test are released, whichever is earlier.

- E. RETURN-TO-DUTY TESTING: Prior to returning to duty requiring the performance of safety-sensitive functions when a driver has engaged in conduct prohibited under this policy/procedure, the driver shall undergo a return-to-duty alcohol and/or controlled substances test(s) as appropriate.

Drivers found to have engaged in prohibited conduct under the alcohol provisions of this policy/procedure will not be permitted to return to duty unless the subsequent alcohol test reveals a result less than or consistent with federal and state standards. In cases involving controlled substances, a verified negative result is necessary before a driver may return to duty.

- F. FOLLOW-UP TESTING: In the event that a driver has been found to have been in violation of the prohibitions herein contained and is identified as requiring assistance in resolving problems associated with alcohol and/or controlled substances, the school unit shall require the driver to submit to at least six (6) unannounced follow-up alcohol and/or controlled substances tests during the first 12 months after returning to duty. Follow-up tests will be unannounced and may continue for up to 60 months after returning to duty. [Follow-up alcohol testing shall be conducted only when the driver is performing, just before, or just after ceasing to perform safety-sensitive functions.]

IX. VIII. REFUSAL TO SUBMIT TO TESTING

All drivers who are required by federal regulations to submit to drug/alcohol testing must do so immediately upon being directed to submit to the test(s). A driver's refusal to submit to testing will subject the driver to immediate removal from the performance of safety-sensitive functions. In additions, failure to comply with Federal regulations or this procedure is grounds for disciplinary action up to and including dismissal. Any of the following actions on the part of a driver constitutes a refusal to submit to a test:

- A. Failure to provide adequate specimens/samples of substance(s) undergoing testing, including but not limited to breath and urine, without a valid medical reason;
- B. Engaging in conduct which obstructs the testing process; and
- C. Refusal by an employee to complete and sign testing forms.

X. TRAINING FOR SUPERVISORS

This school unit will assign persons who will be designated to determine whether reasonable suspicion exists to require a driver to undergo testing under Part 382, with at least sixty (60) minutes of training on alcohol misuse and receive at least an additional sixty (60) minutes of training on controlled substances. Training shall cover the physical, behavioral, speech, and performance indicators of probably alcohol misuse and use of controlled substances.

XI. ENFORCEMENT

This school unit, in its independent authority as an employer, shall subject any driver who violates this policy/administrative procedure or Federal regulations to potential disciplinary action up to and including dismissal, except to the extent that any state law or collective bargaining agreement requires otherwise.

In addition, any driver who refuses to submit to a post-accident, random, reasonable suspicions, return-to-duty or follow-up test(s) shall not perform or continue to perform safety-sensitive functions.

Furthermore, no driver tested and found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall perform or continue to perform safety-sensitive functions including driving a commercial motor vehicle until the start of the driver's next regularly scheduled duty period, but not less than 24 hours after the test was administered.

XII. RECORDS

Employee drug and alcohol tests and results shall be maintained under strict confidentiality in a secure location with controlled access and released only in accordance with law. A driver, upon written request, shall receive copies of any records pertaining to his/her use of drugs or alcohol, including any records pertaining to his/her drug tests. Records shall be made available to subsequent employers or other identified persons only when expressly requested in writing by the

driver.

XIII. NOTIFICATIONS

Each driver shall receive educational materials prior to the school unit's commencement of alcohol and controlled substances testing. Such material will explain the requirements of the Code of Federal Regulations, Title 49, Part 382, and contain a copy of the Board's policy and administrative procedures for meeting these requirements. Representatives of employee organizations shall be notified of the availability of this information. The school unit shall also include in the package of informational material submitted to each driver, a statement certifying that he/she has received the informational material. The school unit shall maintain the original signed copy of the statement on file.

In addition to the aforementioned items, the school unit shall also make available to drivers and representatives of employee organizations information, which shall identify:

- A. The person designated by the school unit to answer questions about the materials;
- B. The procedures that will be used to test for the presence of alcohol and controlled substances; protect the driver and the integrity of the testing processes; safeguard the validity of the test results, and ensure that those results are attributed to the correct driver;
- C. Information concerning the effects of alcohol and controlled substances on an individual's health, work and personal life; signs and symptoms of an alcohol or a controlled substance(s) problem (the driver's or co-worker's); and available methods of intervening when an alcohol or controlled substances problem is suspected, including confrontation, referral to any employee assistance program and/or referral to management.

XIV. RETURN TO DUTY

If a school unit has not discharged a driver due to his /her engagement in prohibited conduct under this policy/procedure, the bus driver must, prior to returning to safety- sensitive duties:

- A. Undergo return-to-duty testing and obtain an alcohol concentration level of less than 0.02 and/or a verified negative test for controlled substances;
- B. Have been evaluated by a substance abuse professional; and
- C. Have followed prescribed and/or recommended treatment.

XV. OTHER POLICIES/PROCEDURES

Nothing contained in this administrative procedure shall prevent the Board from establishing and enforcing independent policies/procedures relating to the possession, being under the influence of, distribution, sale or use of alcohol or controlled substances or any misconduct associated therewith and the penalties for violation of those policies/procedures, up to and including dismissal.

Legal References: 49 C.F.R. Parts 40, 382, 390, 395

26 M.R.S.A. §§ 681(8)(B); 685(2); 689

Adopted: 3/30/15