

PERSONNEL

Drug and Alcohol Testing of Commercial Motor Vehicle Operators

~~School bus drivers shall be subject to a drug and alcohol testing program that fulfills the requirements of the Code of Federal Regulations, Title 49, Part 382. All VBCPS employees and applicants who hold or are required to hold a commercial driver's license (CDL) as a condition of employment, shall comply with the Omnibus Transportation Employee Testing Act of 1991, and Regulations of the Federal Highway Administration, contained in 49 CFR Parts 40 and 382.~~

~~Other persons who drive vehicles designed to transport 16 or more passengers, including the driver, are likewise subject to the drug and alcohol testing program. (49 CFR 382.103)~~

A. Definitions

1. "Alcohol" means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohol, including methyl and isopropyl alcohol.
2. "Alcohol use" means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.
3. "Commercial motor vehicle" means a motor vehicle that has a gross vehicle weight rating of 26,001 or more pounds or is designed to transport 16 or more passengers, including the driver.
4. "Driver" means any person who operates a commercial motor vehicle including, but not limited to, full-time, part-time, casual, intermittent and occasional drivers and, for purposes of pre-employment/pre-duty testing, persons applying to be drivers.
5. "Performing a safety-sensitive function": means a driver is considered to be performing a safety-sensitive function during any period in which they are actually performing, ready to perform, or immediately available to perform any safety-sensitive function.
6. "Safety-sensitive function" means all on-duty functions performed from the time a driver begins work or is required to be ready to work until they are relieved from work and all responsibility for performing work. It includes 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; and performing any other work for the school division or paid work for any other entity.

B. Testing

Testing procedures and facilities used for the tests shall conform with the requirements of the Code of Federal Regulations. Title 49, Section 40 *et seq.*

A.1. Pre-Employment Tests

a. Tests shall be conducted before the first time a driver performs any safety-sensitive function for the school division. (49 CFR 382.301)

~~— Safety sensitive functions include all on-duty functions performed from the time a driver begins work or is required to be ready to work until he/she is relieved from work and all responsibility for performing work. It includes 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; and performing any other work for the school division or paid work for any other entity. (49 CFR 382.107, 395.2)~~

b. The tests shall be required of an applicant only after ~~he/she has~~they have been offered the position. Persons testing positive for drugs or alcohol shall have their employment offer rescinded.

c. Exceptions for pre-employment testing may be made for drivers who have had the alcohol test required by law within the previous six months and participated in the drug testing program required by law within the previous 30 days, provided that the school division has been able to make all verifications required by law. (49 CFR 382.301)

B. 2. Post-Accident Tests

~~— Alcohol and controlled substance tests shall be conducted as soon after an accident as practicable on any driver:~~

~~a. who was performing safety-sensitive functions with respect to the vehicle, if the accident involved loss of human life; or~~

~~b.a. who receives a citation under state or local law for a moving traffic violation arising from the accident. (49 CFR 382.303)~~

b. Drivers shall make themselves readily available for testing, absent the need to immediate medical attention. (49 CFR 382.303)

c. No such driver shall use alcohol for eight hours after the accident, or until after ~~he/she~~they have undergone a post-accident alcohol test, whichever occurs first. (49 CFR 382.209)

d. If an alcohol test is not administered within two hours or if a drug test is not administered within 32 hours, the school division shall prepare and maintain records explaining why the test was not conducted. Tests will not be given if not

administered within eight hours after the accident for alcohol or within 32 hours for drugs.

- e. Tests conducted by authorized federal, state or local officials will fulfill post-accident testing requirements provided they conform to applicable legal requirements and are obtained by the school division. Breath tests will validate only the alcohol test and cannot be used to fulfill controlled substance testing obligations. (49 CFR 82.303)

C.3. Random Tests

- a. Tests shall be conducted on a random basis at unannounced times throughout the year. Tests for alcohol shall be conducted just before, during or just after the performance of safety-sensitive functions. The number of random alcohol tests annually must equal 25% of the average number of driver positions. The number of random drug tests annually must equal 50% of the average number of driver positions. Drivers shall be selected by a scientifically valid random process, and each driver shall have an equal chance of being tested each time selections are made. (49 CFR 382.305)
- b. A driver who is notified of selection for random testing must proceed to the test site immediately, unless the driver is performing a safety-sensitive function, in which case the driver shall proceed to the site as soon as possible after ceasing to perform the function.

D.4. Reasonable Suspicion Tests

- a. Tests shall be conducted when a supervisor or school division official trained in accordance with law has reasonable suspicion that the driver has violated the school division's alcohol or drug prohibitions. This reasonable suspicion must be based on specific, contemporaneous, articulable observations concerning the driver's appearance, behavior, speech or body odors. The observations may include indications of the chronic and withdrawal effects of controlled substances. (49 CFR 382 .307)

(cf. 4020 – Drug and Alcohol-Free Workplace)

~~Alcohol tests are 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 comply with alcohol prohibitions. An alcohol test may not be conducted by the person who determines that reasonable suspicion exists to conduct such a test. If an alcohol test is not administered within two hours of a determination of reasonable suspicion, the school division shall prepare and maintain a record explaining why this was not done. Attempts to conduct alcohol tests shall terminate after eight hours. (49 CFR 382.307)~~

b. A supervisor or school division official who makes observations leading to a controlled substance reasonable suspicion test shall make a written record of ~~his/her~~their observations within 24 hours of the observed behavior or before the results of the drug test are released, whichever is earlier. (49 CFR 382.307)

~~E.5.~~ Enforcement

a. Any driver who refuses to submit to a post-accident, random, reasonable suspicion or follow-up tests shall not perform or continue to perform safety-sensitive functions and shall be subject to disciplinary action up to and including dismissal. (49 CFR 382.211)

b. Drivers who test positive for alcohol or drugs shall be subject to disciplinary action up to and including dismissal.

~~—A driver who violates shall division prohibitions related to drugs and alcohol shall receive from the school division the names, addresses and telephone numbers of substance abuse professionals and counseling and treatment programs available to evaluate and resolve drug and alcohol related problems. The employee shall be evaluated by a substance abuse professional who shall determine what help, if any, the driver needs in resolving such a problem. Any substance abuse professional who determines that a driver needs assistance shall not refer the driver to a private practice, person or organization in which he/she has a financial interest, except under circumstances allowed by law. (49 CFR 382.605)~~

~~—An employee identified as needing help in resolving a drug or alcohol problem shall be evaluated by a substance abuse professional to determine that he/she has properly followed the prescribed rehabilitation program and shall be subject to unannounced follow-up tests after returning to duty. (49 CFR 382.605)~~

c. Nothing in this Regulation shall prohibit the dismissal or other disciplinary action against an employee pursuant to any other policy, regulation, ordinance, or law. This Regulation is intended to supplement, and not supplant, any such policy, regulation, ordinance, or law.

~~F.6.~~ Return-to-Duty Tests

a. If a driver who has violated the school division's drug or alcohol prohibition is allowed to return to work, Aa drug or alcohol test shall be conducted ~~whenbefore~~ they ~~a driver who has violated the school division's drug or alcohol prohibition returns~~ to performing safety-sensitive duties. (49 CFR 382.309)

b. Employees whose conduct involved drugs cannot return to duty in a safety-sensitive function until the return-to-duty drug test produces a verified negative result. (49 CFR 382.605)

- c. Employees whose conduct involved alcohol cannot return to duty in a safety-sensitive function until the return-to-duty alcohol test produces a verified result that meets federal and school division standards.

G.7. Follow-up Tests

A driver who violates the school division's drug or alcohol prohibition and is subsequently identified by a substance abuse professional as needing assistance in resolving a drug or alcohol problem shall be subject to unannounced follow-up testing as directed by the substance abuse professional in accordance with law. Follow-up alcohol testing shall be conducted just before, during or just after the time when the driver is performing safety-sensitive functions. (49 CFR 382.311)

H.8. Records

Employee drug and alcohol test results and records shall be maintained under strict confidentiality and released only in accordance with law. Upon written request, a driver shall receive copies of any records pertaining to his/her/their use of drugs or alcohol, including any records pertaining to his/her/their drug or alcohol tests. Records shall be made available to a subsequent employer or other identified persons only as expressly requested in writing by the driver. (49 CFR 382.405)

I.9. Notifications

- ~~—a. Each driver shall receive educational materials that explain the requirements of the Code of Federal Regulations, Title 49, Part 382, together with a copy of the school divisions policy and regulations for meeting these requirements. Representative of employee organizations shall be notified of the availability of this information. The information shall identify:~~
 - ~~a. The person designated by the school division to answer driver questions about the materials;~~
 - ~~b. The categories of drivers who are subject to the Code of Federal Regulations, Title 49, Part 382;~~
 - ~~c. Sufficient information about the safety-sensitive functions performed by drivers to make clear what period of the work day the driver is required to comply with Part 382;~~
 - ~~d. Specific information concerning driver conduct that is prohibited by Part 382;~~
 - ~~e. The circumstances under which a driver will be tested for drugs and/or alcohol under Part 382;~~

- ~~f. The procedures that will be used to test for the presence of drugs and alcohol, protect the driver and the integrity of the testing processes, safeguard the validity of test results and ensure that test results are attributed to the correct driver;~~
- ~~g. The requirement that a driver submit to drug and alcohol tests administered in accordance with Part 382;~~
- ~~h. An explanation of what constitutes a refusal to submit to a drug or alcohol test and the attendant consequences;~~
- ~~i. The consequences for drivers found to have violated the drug and alcohol prohibitions of Part 382, including the requirement that the driver be removed immediately from safety sensitive functions and the procedures for referral, evaluation and treatment;~~
- ~~j. The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less than 0.04; and~~
- ~~k. Information concerning the effects of drugs and alcohol on an individual's health, work and personal life; signs and symptoms of a drug or alcohol problem (the driver's or a coworker's); and available methods or intervening when a drug or alcohol problem is suspected, including confrontation, referral to an employee assistance program and/or referral to management. (49 CFR 382.601)~~

~~(cf. 4159 Employee Assistance Programs)~~

~~Drivers shall also receive information about legal requirements, school division policies, and disciplinary consequences related to the use of alcohol and drugs.~~

- b. Each driver shall sign a statement certifying that he/she has they have received a copy of the above materials. ~~(49 CFR 382.601)~~
- c. Before any driver operates a commercial motor vehicle, the school division shall provide him/her with post-accident procedures that will make it possible to comply with post-accident testing requirements. (49 CFR 382.303)
- d. Before drug and alcohol tests are performed, the school division shall inform drivers that the tests are given pursuant to the Code of Federal Regulations, Title 49, Part 382. ~~This notice shall be provided only after the compliance date specified in law. (49 CFR 382.113)~~
- e. The school division shall notify a driver of the results of a pre-employment drug test if the driver requests such results within 60 calendar days of being notified of the disposition of his/her their employment application. (49 CFR 382.411)

f. The school division shall notify a driver of the results of random, reasonable suspicion and post-accident drug tests if the test results are verified positive. ~~The district shall also tell the driver which controlled substance(s) were verified as positive. (49 CFR 382.411)~~

g. Drivers shall inform their supervisors if at any time they are using a controlled substance which their physician has prescribed for therapeutic purposes. Such a substance may be used only if the physician has advised the driver that it will not adversely affect ~~his/her~~their ability to safely operate a commercial motor vehicle. (49 CFR 382.213)

h. An employee identified as needing help in resolving a drug or alcohol problem ~~shall~~ may be evaluated by a substance abuse professional to determine that ~~he/she~~they ~~has~~haves properly followed the prescribed rehabilitation program and shall be subject to unannounced follow-up tests after returning to duty. (49 CFR 382.605)

Approved by Superintendent: December 6, 1994

Revised by the Superintendent: