

ALCOHOL AND DRUG-TESTING OF BUS DRIVERS REGULATION

I. Tests

In accordance with the provisions of the Federal Department of Transportation Rule 49 CFR part 40 and 49 CFR Parts 382, et. al., otherwise known as The Omnibus Transportation Act of 1991 (hereinafter referred as the ACT), there are several occasions when an individual will be subject to drug and alcohol screening tests. These occasions shall include:

- A. Pre-employment/Pre-duty
- B. Reasonable suspicion
- C. Random selection
- D. Post accident
- E. Return-to-duty
- F. Follow-up

II. Definitions

- A. Alcohol
Alcohol is the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl and isopropyl alcohol.
- B. Alcohol Use
Alcohol use is the consumption of any beverage, mixture, or preparation, including any medication containing alcohol.
- C. Breath Alcohol Technician (BAT)
A breath alcohol technician is an individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device.
- D. BAC
Blood alcohol content level.
- E. Commercial Motor Vehicle
A commercial motor vehicle means a motor vehicle or a combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:
 - 1. has a gross combination weight of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or

2. has a gross vehicle weight rating of 26,001 or more pounds; or
3. is designed to transport 15 or more passengers, including the driver; or
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 and which require the motor vehicle to be placarded under the Hazardous Material Regulations (49 CFR Part 172, Subpart F).

F. Confirming test

For alcohol testing, confirming test means a second test, following a screening test with a result of 0.02 or greater, that provides quantitative data of alcohol concentration.

For controlled substances; confirming test means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy. (GC/MS is the only authorized confirmation for cocaine, marijuana, opiates, amphetamines, and phencyclidine).

G. Drug and Alcohol Coordinator

The Drug and Alcohol Coordinator shall be the Health Services Coordinator and/or designee.

H. Evidential Breath Testing Device (EBT)

An EBT is a device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's "conforming Product's List of Evidential Breath Measurement Devices."

I. Follow-up testing

Follow-up tests are given following a determination by the Substance Abuse Professional (SAP) that a driver is in need of assistance in resolving problems associated with the misuse of alcohol and/or controlled substances. This is an unannounced test, given at least six (6) times within twelve (12) months following the employee's return to duty with the actual frequency and number of tests determined by the SAP.

J. Medical Review Officer (MRO)

A licensed physician responsible for receiving laboratory results generated by the District's drug test program who has knowledge of substance abuse disorders and has appropriate medical training to

interpret and evaluate an individual's positive test result together with his or her medical history and any other relevant biomedical information.

- K. Post Accident
A chemical test for alcohol and controlled substances administered by appropriately trained individuals: (1) to each surviving driver at the scene of an accident in which there is a fatality; (2) after an accident in which the driver is issued a citation for a moving violation and someone is injured, or, (3) after an accident in which the vehicle is required to be towed away and the driver is issued a citation

- L. Post-rehabilitative/Return to duty
Unannounced chemical testing for alcohol and controlled substances administered at intervals to ensure that an employee in a safety sensitive function is maintaining abstinence for the abuse of drugs and/or alcohol.

- M. Pre-employment/Pre-duty testing
Chemical testing of employees for alcohol and controlled substances prior to their assuming duties of a safety sensitive function with the District in positions covered by federal regulations to ensure employees are free of illegal drugs.

- N. Random drug/alcohol testing
A system of unannounced chemical testing for alcohol and controlled substances administered in a statistically random manner throughout the year to a group employed by the district in a safety sensitive function so that all persons within that group have an equal probability of selection each time said random pool is created for selection.

- O. Reasonable suspicion
Testing which will be conducted only after a trained supervisor has observed an employee whose conduct, behavior, appearance, speech, body odors, or other specific, contemporaneous, articulable, observations concerning such conduct warrant such a test.

A written record shall be made of observations leading to controlled substances reasonable suspicion, signed by the supervisor or person who made the observations, within twenty-four (24) hours of the observed behavior or before the results of controlled substances test are released, whichever is earlier.

This test for alcohol must be administered within two (2) hours of the determination to administer such test, or the District shall prepare and maintain on file a report stating reasons why the test was not promptly administered. If this test is not administered within eight (8) hours of the determination, the District shall not administer the test and shall prepare and maintain a report documenting said failure to test.

P. Refusal to submit

A driver who: (1) fails to provide adequate breath for testing without a valid medical explanation after he or she has received a notice of the requirement for the breath testing; (2) fails to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for urine testing; (3) engages in conduct that clearly obstructs the testing process, or; (4) refuses to submit, will be classified as a refusal to submit to an alcohol or controlled substance test.

Q. Return to duty test

A test required after a positive alcohol test is confirmed and before the employee's return to duty which results in a finding of alcohol concentrations of less than 0.02. The return-to-duty test administered following confirmation of a positive controlled substances test, must result in a verified negative result for controlled substances.

R. Screening test

In alcohol testing, screening test means an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in his or her system. In controlled substances testing, it means an immunoassay screen to eliminate "negative" urine specimens from further consideration.

S. Safety sensitive function

A safety sensitive function means any of those on-duty functions as listed below:

1. All time at a District facility, or other property, waiting to be dispatched, unless the driver has been relieved from duty by the District;
2. All time inspecting equipment as required by the Federal Motor Carrier Safety Regulations (FMCSR's), or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;

3. All time spent at the driving controls of a commercial motor vehicle;
4. All time, other than driving time, spent on or in a commercial motor vehicle (except for time spent resting in the sleeper berth);
5. All time spent loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded;
6. All time spent performing the driver requirements associated with an accident;
7. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle;
8. All time spent providing a breath sample or urine specimen, including travel time to and from the collection site, in order to comply with the random, reasonable suspicion, post-accident, or follow-up testing when directed by the District;
9. Performing any other work in the capacity of, or in the employ or service of, a common, contract or private motor carrier;
10. Performing any compensated work for any non-motor carrier entity.

T. Substance Abuse Professional (SA)

A substance abuse professional means a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of an clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

III. *Work day compliance period*

Employees covered by this policy are eligible for drug and alcohol testing as follows:

- A. Immediately prior to the start of duty in a safety sensitive function;
- B. During duty hours in a safety sensitive function;
- C. Immediately following completion of duty in a safety sensitive function.

IV. *Prohibited conduct*

A. Alcohol

1. No driver shall report for duty or remain on duty requiring the performance of safety sensitive functions while having an alcohol concentration of 0.04 or greater. No employer having

actual knowledge that a driver has an alcohol concentration of 0.04 or greater shall permit the driver to perform or continue to perform safety-sensitive functions.

2. No driver shall use alcohol while performing safety sensitive functions. No employer having actual knowledge that a driver is using alcohol while performing safety-sensitive functions shall permit the driver to perform or continue to perform safety-sensitive functions.
3. No driver shall perform safety-sensitive functions within (4) hours after using alcohol. No employer having actual knowledge that a driver has used alcohol within four (4) hours shall permit the driver to perform or continue to perform safety-sensitive functions.
4. No driver required to take a post accident alcohol test shall use alcohol for eight (8) hours following the accident, or until he/she undergoes a post accident alcohol test, whichever is first.
5. No driver shall refuse to submit to a post-accident alcohol or controlled substances test required under this policy, a random alcohol or controlled substances test required under this policy, a reasonable suspicion alcohol or controlled substances test required under this policy, or a follow-up alcohol or controlled substances test required under this policy. No employer shall permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions.

B. Controlled Substances

1. No driver shall report for duty, remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except when the use is pursuant to the instructions of a physician who has advised the driver that the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle. It is the driver's responsibility to notify the district if this situation is applicable.
2. No employer having actual knowledge that a driver has used a controlled substance shall permit the driver to perform or continue to perform a safety-sensitive function.
3. The driver must notify the District if he/she is using any therapeutic drugs.
4. No driver shall report for duty, remain on duty, or perform a safety-sensitive function, if the driver tests positive for controlled substances. No employer having actual knowledge that a driver has tested positive for controlled substances shall permit the driver to perform or continue to perform safety-sensitive functions.

V. *Procedures for testing*

Employees covered by this policy will be tested for alcohol by a breath alcohol technician using an evidential breath testing device. Split sample urine testing will be the method used for testing for controlled substances.

The services of an independent evaluator will be retained to perform the collection, testing, chain of custody to ensure the correct employee is tested and matched with the correct test results. The independent evaluator will submit the results to the Medical Review Officer. The independent evaluator will be required to follow the federal regulations to ensure compliance with the blind sample, calibration of the EBT, laboratory certification and proper training of the BAT. Testing for alcohol and/or controlled substances will be taken on-site or at a designated laboratory, in a secure location and with the proper safeguards to ensure the integrity of the specimens collected.

If a specimen tests positive, the employee will be contacted by the MRO who will discuss his/her findings with the employee. If the MRO is not convinced that there is a reasonable cause for the positive finding, then the employee will be given the opportunity to have the second split sample tested. The cost for testing this split sample will be the employee's responsibility.

VI. *Refusal to submit to testing*

No driver shall refuse to submit to a post-accident alcohol or controlled substances test required under the ACT (§382.303), a random alcohol or controlled substances test required under the ACT (§382.305), a reasonable suspicion alcohol or controlled substances test required under the ACT (§382.307), or a follow-up alcohol or controlled substances test required under the ACT (§382.311). No employer shall permit a driver who refuses to such tests to perform or continue to perform safety-sensitive functions.

A refusal to be tested shall be defined as a refusal by an employee to complete and sign the breath alcohol testing form, failure to provide breath or an adequate amount of breath, or otherwise to act in a way that prevents the completion of the test. Such refusal shall be noted by the BAT in the remarks section of the form. The testing process shall be terminated and the BAT shall immediately notify the District. An employee who refuses to be tested for alcohol controlled substances pursuant to this policy shall be suspended with pay and an immediate review shall be undertaken by the District to determine the degree of discipline to be administered.

VII. Uncompleted testing

If a screening or confirmation test cannot be completed, or if an event occurs that would invalidate the test, the BAT, shall, if practicable begin a new screening or confirmation test, as applicable, e.g., using a new breath alcohol testing form with a new sequential test number.

VIII. Referral, evaluation and treatment

- A. The District shall advise and make available to the driver the resources available for evaluating and resolving problems associated with the misuse of alcohol and use of controlled substances, including the names, addresses, and telephone numbers of substances abuse professionals and counseling and treatment programs.
- B. The District shall ensure that each driver who engages in conduct prohibited by this policy shall be evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and controlled substances use. The costs associated with this evaluation shall be covered by the school district.
- C. Before a driver returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by this policy, the driver shall undergo a return to duty alcohol test with a result indicating an alcohol concentration of less than 0.02 if the conduct involved a controlled substance.
- D. Each driver identified as needing assistance in resolving problems associated with alcohol misuse or controlled substances use shall:
 - 1. Be evaluated by a substance abuse professional to determine that the driver has properly followed any rehabilitation program prescribed under Section VIII.D.2. of this policy;
 - 2. Shall be subjected to unannounced follow-up-up alcohol and controlled substances tests administered by the District following the driver's return to duty. The number and frequency of such follow-up tests shall be as directed by the substance professional, and consist of at least six (6) tests in the first twelve (12) months following the driver's return to duty. The District may direct the driver to undergo return-to-duty and follow-up testing for both alcohol and controlled substances, if the substance abuse professional determines that return-to-duty and follow-up testing for both alcohol and controlled substances is necessary for that particular driver. Such testing

shall be in conformance with this policy and the requirements of the ACT. Follow-up testing shall not exceed sixty (60) months from the date of the driver's return to duty. The substance abuse professional may terminate the requirement at any time after the first six (6) tests have been administered, if the substance abuse professional determines that such testing is no longer necessary.

3. The evaluation and rehabilitation may be provided by the District, by a substance abuse professional under Contract with the District or by a substance abuse professional not affiliated with the District.

The choice of a substance abuse professional and assignment of costs shall be made in accordance with District/driver agreements and District policies.

4. The District shall ensure that a substance abuse professional who determines that a driver requires assistance in resolving problems with alcohol misuse or controlled substances use does not refer the driver to the substance abuse professional's private practice or to a person or organization from which the substance abuse professional receives remuneration or in which the substance abuse professional has a financial interest.
5. The requirements of this section with respect to referral, evaluation and rehabilitation do not apply to applicants who refuse to submit to a pre-employment alcohol or controlled substances tests or who have a pre-employment alcohol test with a result indicating an alcohol concentration of 0.04 or a controlled substances test with a verified positive test result.

IX. Consequences for Drivers

No driver shall perform safety-sensitive functions, including driving a commercial motor vehicle, if the driver has engaged in conduct prohibited by subpart B of the ACT's regulations or an alcohol or controlled substances rule of another DOT agency or this policy. The District shall not permit any driver to perform safety-sensitive functions, including driving a commercial motor vehicle, if the District has determined that the driver had violated this policy.

Drivers who have been found to have violated this policy shall:

- A. Be immediately suspended from their safety-sensitive function without pay;

- B. If the violation is for the illegal use or possession of controlled substances in accordance with this policy, and after a review of all pertinent facts leading to the suspension, said driver shall be terminated;
- C. If the use of alcohol registers on the EBT with an alcohol content of 0.02 to 0.0399 (but less than 0.04), then the affected employee shall be advised to seek assistance and/or counseling through the District's EAP or other similar service agency. A second violation for the use of alcohol in a safety-sensitive position in accordance with this policy shall result in a suspension without pay pending a review of the employee's work record for disciplinary action, up to and including discharge;
- D. If the use of alcohol registers on the EBT with an alcohol content greater than 0.04, then the affected employee shall be directed to seek assistance and/or counseling through the District's EAP or other similar service agency;
- E. The above actions shall be taken in accordance with the provisions of the employee's collective bargaining agreement, §75 of the Civil Service Law, or §3020-a of the Education Law, whichever is applicable.

X. *Employee verification*

Each driver is required to sign a statement certifying that (s)he has received this information and materials, and the District shall maintain the original signed certification for a minimum of two (2) years. The District may provide a copy of same to the driver.

XI. *Federal Compliance*

This policy shall not apply in any case where it is inconsistent with constitutional, statutory, or other legal provisions. If any provision of this policy is found to be contrary to law by the Supreme Court of the United States, or by any court of competent jurisdiction from whose judgment or decree no appeal has been taken within the time provided for doing so, such policy shall be modified to the extent necessary to confirm thereto. In such cases, all other provisions of this policy shall remain in effect.

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