

## BUS SAFETY PROGRAM

Code **EEAE-R** Issued **8/04**

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School bus drivers who operate a motor vehicle requiring a commercial driver's license (CDL) and other drivers who perform safety-sensitive functions are subject to a drug and alcohol testing program that fulfills the requirements of the Code of Federal Regulations, Title 49, Parts 40 and 382.

The district transportation director will answer all questions regarding the board policy or regulation or the drug and alcohol testing program.

### Definitions

*Covered driver.* Those individuals driving a vehicle weighing in excess of 26,001 pounds or a vehicle transporting 16 or more persons, including the driver and requiring a CDL to hold the driver position. (49 CFR 382.107) Covered drivers include coaches, teachers, administrators and others who drive a school vehicle meeting these requirements.

*Safety-sensitive function.* The on-duty functions of 1) waiting to be dispatched; 2) inspecting, servicing or conditioning vehicles or equipment; 3) driving; 4) duties other than driving performed in a vehicle; 5) unloading or supervising vehicles; 6) duties required after an accident; and 7) repairing, obtaining assistance or supervising disabled vehicles.

*Testing company.* An independent private company selected by the district (*option: South Carolina Department of Education*) to provide assistance to individual school districts in complying with the Omnibus Transportation Employee Testing Act of 1991.

*Medical review officer (MRO).* Physician employed by the testing company to perform certain services related to all covered employees.

*Substance abuse professional.* A licensed physician 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 and clinical experience in the diagnosis and treatment of alcohol and controlled substance-related disorders.

*Required hours of compliance.* Drivers covered by this policy must not consume alcohol 1) while performing a safety-sensitive function, 2) four hours prior to performing a safety-sensitive function, and 3) up to eight hours following a motor-vehicle accident or until the driver undergoes a post-accident test, whichever occurs first. The law prohibits the use and ingestion of prohibited drugs at all times.

*On-duty time.* 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 as required by this law.

*Stand-down.* The practice of temporarily removing an employee from the performance of safety-sensitive functions based on a report from a laboratory to the MRO of a confirmed positive test for a drug or a drug metabolite, an adulterated or a substituted test, before the MRO has completed verification of the test results.

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### **Required tests**

#### *Pre-employment drug testing*

- A driver applicant must take a drug test before being hired for a safety-sensitive position. Before any existing worker in a department of transportation driver position will be assigned, transferred or otherwise permitted to operate a commercial motor vehicle on behalf of the district for the first time, he/she must also submit to testing. Employment with the district is contingent upon the employee receiving negative drug test results.
- The applicant will receive written notification of the drug tests prior to taking the tests. The applicant will be asked to sign a general consent and release to be tested for drugs.
- An employee may be exempt from the pre-employment drug test if he/she participated in a drug testing program within 30 days prior to the application for employment and while participating in that program was tested for drugs within the last six months (from the date of application) or participated in a random drug testing program in the previous 12 months, provided that the district has been able to make all verifications required by law.
- If a district contracts with a private company to provide drivers more than once a year, the district will assure itself once every six months that the drivers participate in an alcohol and controlled substances testing program that meets the rules.

#### *Pre-employment alcohol testing*

The district will require pre-employment alcohol testing in accordance with the following.

- All individuals considered for employment or transfer with the district and subject to federal regulations will be tested.
- All tests will be conducted using the alcohol testing procedures of the federal regulation.
- Such tests must be conducted prior to the new or transferred employee's performance of safety-sensitive functions.

#### *Post-accident drug testing*

- Prior to performing safety-sensitive duties, drivers will receive instruction on post-accident procedures.
- Districts will conduct alcohol and controlled substance tests as soon after a motor-vehicle accident as is practicable on any driver under these conditions.
  - who was performing safety-sensitive functions with respect to the vehicle, if the accident involved loss of human life
  - who receives a citation under state or local law for a moving traffic violation arising from the accident
- No such driver will use alcohol for eight hours after the accident or until he/she undergoes a post-alcohol test, whichever comes first.
- If an alcohol test is not administered within two hours or if a drug test is not administered within 32 hours, the district will prepare and maintain records explaining why the tests were not conducted. There is no need to test for alcohol if the test is not administered within eight hours after the accident or within 32 hours for drugs.

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- 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 district. Breath tests will validate only the alcohol test and cannot be used to fulfill drug testing obligations.
- Districts will deem drivers who do not remain readily available for testing as refusing to submit to testing.

### **Random tests**

- Tests will be conducted on a random basis at unannounced times throughout the year.
- The selection of drivers will be by a scientifically valid random process and each driver will have an equal chance of being tested each time selections are made.
- The testing company will determine the number of drivers to be randomly tested. The minimum annual percentage rate for random alcohol testing will be 10 percent of the average number of driver positions. For controlled substance testing, the rate will be 50 percent.
- Tests for alcohol will be conducted just before, during or just after the performance of safety-sensitive functions. "During" is to enable detection of drivers who use alcohol on the job. The purpose of testing "just before" and "just after" is to avoid the problem of interrupting some safety-sensitive functions for the performance of a test (e.g., driving a school bus).
- Random tests for drugs do not have to be conducted in immediate time proximity to performing safety-sensitive functions. Once notified of selection for drug testing, an employee must proceed to a collection site.

### **Reasonable suspicion testing**

- Reasonable suspicion observations will be based on specific, contemporaneous and articulable observations concerning the appearance, behavior, speech or body odor of a driver.
- Reasonable suspicion observations will be made only by a district supervisor or official who has received at least 60 minutes of training on the physical, behavioral, speech and performance indicators of alcohol misuse and an additional 60 minutes of training that covers these indicators of controlled substance use.
- The person making the determination that reasonable suspicion exists will not conduct the test.
- 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 workday when the employee must comply with alcohol prohibitions. If an alcohol test is not administered within two hours of a determination of reasonable suspicion, the district will prepare and maintain a record explaining why this was not done. Attempts to conduct alcohol tests will cease after eight hours.
- A supervisor or district official who makes a finding of reasonable suspicion must also make a written record of the observations leading to a reasonable suspicion drug test within 24 hours of the observed behavior or before the results of the drug test are released, whichever is earlier.

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### **Return to duty tests**

- A drug or alcohol test will be conducted when a driver who has violated the district's drug or alcohol prohibition returns to performing safety-sensitive duties.
- A driver whose conduct involved misuse of drugs may not return to duty in a safety-sensitive function until the return to duty drug test produces a verified negative result.
- A driver whose conduct involved alcohol may not return to duty in a safety-sensitive position until the return to duty alcohol test produces a verified result that meets federal and district standards.

### **Follow-up tests**

- After returning to duty, a driver is subject to six unannounced follow-up tests within 12 months for alcohol, drugs or both if the substance abuse professional determines both are necessary.
- The substance abuse professional can terminate the follow-up testing requirement after the first six tests have been completed or continue the follow-up testing for up to 60 months from the date of the driver's return to duty.
- Alcohol follow-up testing is done just before, during or just after performing a safety-sensitive function.

### **Stand-down**

A covered employee will be subject to stand-down only with respect to the actual performance of safety-sensitive duties.

No adverse action affecting the employee's pay and benefits will be taken pending the completion of the MRO verification process. This includes continuing to pay the employee during the period of the stand-down in the same way the district would have paid him/her had the employee not been stood down.

The verification process will begin no later than the time an employee is temporarily removed from the performance of safety-sensitive functions. The period of stand-down for any employee will not exceed five days, unless the district is informed in writing by the MRO that a longer period is needed to complete the verification process.

In the event the MRO verifies the test negative or cancels it, the following will occur.

- The district will return the employee immediately to the performance of safety-sensitive functions.
- The employee will suffer no adverse personnel or financial consequences as a result.
- No individually identifiable record that the employee had a confirmed laboratory positive, adulterated or substituted test result is maintained. The district will maintain a record of the test only as a negative or cancelled test.

The district may, in its continuing efforts to enhance safety, request a waiver of federal prohibitions against standing down an employee before the MRO has completed the verification process. The written waiver request will be directed to the appropriate federal administrator.

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The district will not stand down an employee in the absence of a waiver or inconsistent with the terms of the waiver.

### **Testing procedures**

Alcohol and split sample controlled substances testing will be conducted by the testing company.

### **Retention of records**

An employer must maintain certain records pertaining to its alcohol misuse and controlled substance use prevention program for a specified period in a secure location with controlled access. The MRO/testing company will maintain copies of test results as a back-up.

There is a five-year record-keeping requirement for positive test results, refusals to take tests and other areas. The employer must maintain records related to the collection process for testing for two years. The employer will keep records of negative and canceled controlled substances test results and alcohol test results of less than 0.02 for a minimum of one year.

The employer will maintain driver drug and alcohol test results and records under strict confidentiality and release them only in accordance with law. Upon written request, a driver may receive copies of any records pertaining to his/her drug or alcohol tests. The employer will make records available to a subsequent employer or other identified persons only as expressly requested in writing by the driver.

The information an employer may release is limited to a positive controlled substances test result, alcohol test results of 0.04 or greater and refusals to be tested for the two years preceding the date of inquiry. The employer will obtain and review driver drug and alcohol test results and records no later than 14 days after the first time a driver performs safety-sensitive functions if it is not feasible to obtain the information beforehand. An employer may not permit a driver to perform safety-sensitive functions without obtaining the information.

### **Reporting**

Each employer must generate and retain, at a minimum, an annual calendar year summary of the results of its alcohol and controlled substance prevention program. The federal government will randomly select a sample of employers to report data. The government will notify this group in January of the year in which the data are due. The report is due by the following March 15 in the format prescribed and provided by the Federal Highway Administration.

### **Notifications**

Each driver will receive educational materials that explain the requirements of the Code of Federal Regulations, Title 49, Part 382, together with a copy of the district's policy and regulations for meeting these requirements. The information will identify the following.

- the person(s) designated by the district to answer driver questions about the materials
- the categories of drivers who are subject to drug and alcohol testing requirements
- sufficient information about the safety-sensitive functions performed by employees to make clear for what period of the work day driver compliance is required
- specific information concerning employee conduct that is prohibited
- circumstances under which a driver will be tested for drugs and/or alcohol

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- procedures that will be used for the presence of drugs and alcohol, protect the driver and the integrity of the testing processes, safeguard the validity of test results and insure that test results are attributed to the correct employee
- the requirement that a driver submit to drug and alcohol tests administered in accordance with federal regulations
- an explanation of what constitutes a refusal to submit to a drug or alcohol test and the attendant consequences
- consequences for employees found to have violated the drug and alcohol prohibitions including the requirement that the driver be removed immediately from safety-sensitive functions and the procedures for referral, evaluation and treatment
- consequences for drivers found to have an alcohol concentration of 0.02 or greater but less than 0.04
- information concerning the effects of drugs and alcohol on an individual's health, work and personal life; external and internal signs and symptoms of a drug or alcohol problem and available methods of intervening when a drug or alcohol problem is suspected including confrontation, referral to an employee assistance program and/or referral to administrative officials

Each driver will sign a statement certifying that he/she has received a copy of the above materials.

The district will notify an applicant of the results of a pre-employment drug test and alcohol test if the applicant requests such results within 60 calendar days of being notified of the disposition of the employment application.

The district will notify a driver of the results of random, reasonable suspicion and post-accident drug tests if the test results are verified positive. The district will also tell the driver which controlled substances were verified as positive.

No employer having actual knowledge that a driver has used a controlled substance or tested positive for controlled substances will permit the driver to perform or continue to perform a safety-sensitive function.

Drivers will inform the district if at any time they are using a controlled substance prescribed by their physician for therapeutic purposes. Such a substance may be used only if the physician has advised the employee that it will not adversely affect the ability to safely perform safety-sensitive functions.

### **Voluntary self-identification program**

The district will establish a voluntary self-identification program consistent with federal requirements. Accordingly, an employee who admits to alcohol misuse or drug use will not be subject to certain referral, evaluation and treatment requirements provided the following occurs.

- The admission is in accordance with the policy and administrative rule.
- The driver does not self-identify in order to avoid required testing.
- The driver makes the admission prior to performing a safety-sensitive function (i.e., prior to reporting to duty).

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- The driver does not perform a safety-sensitive function until the district is satisfied that the employee has been evaluated and has successfully completed education or treatment in accordance with the district's self-identification program guidelines.

Adverse action on the part of the district against any employee making a voluntary admission of alcohol misuse or drug use consistent with this policy and administrative rule is prohibited. The district is committed to providing sufficient opportunity for the employee to seek evaluation, education or treatment to establish control over his/her drug or alcohol problem.

Following successful completion of an educational or treatment program, as determined by a drug and alcohol abuse evaluation expert (i.e., employee assistance professional, substance abuse professional or qualified drug and alcohol counselor), the employee will be permitted to return to duty. The district will ensure that prior to the employee participating in a safety-sensitive function, the employee will be required to undergo a return to duty testing with a result indicating a breath alcohol content of less than 0.02 and/or a verified negative test result for drug use, as appropriate. The district may incorporate employee monitoring and include other follow-up testing as a part of its return to duty procedures under this program.

### **Enforcement**

- If the district determines a driver has an alcohol concentration of .02 or greater but less than .04, the driver will not perform safety-sensitive functions until the start of his/her regularly scheduled duty period, but not less than 24 hours after the administration of the test.
- Any driver who refuses to submit to a post-accident, random, reasonable suspicion or follow-up test will not perform or continue to perform safety-sensitive functions.
- A driver who in any way violates district prohibitions related to drugs and alcohol will receive from the district 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 will be evaluated by a substance abuse professional who will determine what help, if any, the driver needs in resolving such a problem.

The district may assign a driver prohibited from performing safety-sensitive functions to non-safety-sensitive functions until such time as the driver complies with the requirement for returning to duty.

Any substance abuse professional who determines that a driver needs assistance will 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.

- The district may not pay for or provide rehabilitation for drivers affected by this policy.
- The district may not hold a job open for a driver affected by the requirements for drug and alcohol testing.

Nothing in this policy, its supporting regulations or the law relating to drug and alcohol testing limits or restricts the right of the superintendent to discipline a driver, up to and including termination, for conduct which violates the school district's policies and procedures.

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