

Drug & Alcohol Testing of Bus Drivers – Regulations

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. This rule and the substance abuse testing which it requires are mandated by federal law and regulation; except as required by federal law and regulation, the District does not, nor shall it require, suggest or request any substance abuse testing restricted by state law.

This rule 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.

A. Program Administrator

The Transportation Supervisor is the Alcohol/Drug Testing Program Administrator. Questions concerning the testing program are to be directed to the Program Administrator.

B. Substances Tested For

References to tests in these rules include both drug and alcohol tests unless the context specifies otherwise. The term “drugs” and “controlled substances” are interchangeable and have the same meaning. Drugs include, but are not limited to, marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines (including methamphetamines).

C. Drivers Subject to Testing

All bus drivers who must have a Commercial Driver’s License to perform their duties will be subject to the alcohol and/or drug testing as outlined in this rule and required by 49 C.F.R. Part 382.

D. 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; and performing driver requirements related to accidents.

E. Prohibited Conduct

Drivers shall not:

1. Report to and/or remain on duty with an alcohol concentration of 0.02 or greater;
2. Possess any alcohol while on duty;
3. Use any alcohol within four (4) 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; and
8. Report to or remain on duty if he/she has tested positive for controlled substance.

F. Required Tests

1. Pre-employment. Drug testing will be administered before a driver performs any safety-sensitive functions for the District.

The test will be required of an applicant only after he/she has been offered a position. Employment is conditional upon receiving negative drug test results.

2. 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 just 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.

If the District has entered into a consortium including drivers from other school districts, and the 25 and 50 percent levels will apply to the entire pool of drivers.

3. Post-accident. Drivers will be tested as soon as practicable after any accident which:
 - a. Involves the loss of human life; or
 - b. Involves the driver receiving a citation for a moving traffic violation as a result of the accident.

4. Reasonable suspicion. Tests shall be conducted when a properly trained supervisor or District official has reasonable suspicion that the driver has violated the alcohol or drug prohibitions as provided in this rule. This reasonable suspicion will be based on specific 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.

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, the District will prepare and maintain a record explaining why this was not done. Attempts to conduct alcohol tests will terminate after eight (8) hours, and the District shall record the reasons for not administering the test.

A supervisor or District 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 twenty-four (24) hours of the observed behavior or before the results of the test are released, whichever is earlier.

5. Return to duty. A drug or alcohol test shall be conducted when a driver who has violated the District's drug or alcohol prohibition returns to performing safety-sensitive duties.

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.

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 District standards.

6. Follow-up. A driver who violates one of the prohibitions listed in Section E above 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. A driver who has previously tested positive, has been identified as needing assistance in resolving a drug or alcohol problem and has returned to duty must submit to at least six (6) alcohol and/or controlled substance tests during the first year after returning to work. Follow-up tests will be unannounced and may continue for up to sixty (60) months after returning to work.

G. Training for Supervisors

The Program Administrator has the authority to determine whether reasonable suspicion exists to require a driver to undergo a test. Before making any such determination, they shall each receive at least sixty (60) minutes of training of alcohol misuse and at least sixty (60) minutes of additional training on controlled substances use. The training shall cover the physical, behavioral, speech and performance indicators of probable alcohol misuse and use of controlled substances.

H. Testing Procedures

The District will arrange to have testing performed by persons and at facilities having adequate expertise to ensure that testing will be performed in a manner to 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.

All testing for alcohol misuse will be conducted by trained Breath Alcohol Technicians (BATs). All testing to determine alcohol use or misuse will utilize measurement of expired breath with an Evidential Breath Test Device (EBT).

I. Requirement to Submit to Tests

All drivers who are required by federal regulations to be subjected to tests must fulfill that requirement when so directed by the Program Administrator. Once a driver has been directed to submit to a test, he/she will proceed directly to the testing area. Drivers must comply with the lawful requests of the technician performing the test. Failure to

comply with the regulations or this rule will be grounds for disciplinary action up to and including dismissal.

J. Refusal to Test

The following circumstances will be construed as refusing to submit to a test:

1. Failure to report to the designated testing areas immediately after being notified to submit to a required test; or
2. Failure to provide a sufficient sample to be tested, either breath or urine as the case may be, unless medically determined impossible to do so.

K. 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 use of drugs or alcohol, including any records pertaining to his/her drug or alcohol tests. Records shall be made available to a subsequent employer or other persons identified by the driver as directed by the written request or consent of the driver.

L. Prescription Drugs

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 ability to safely operate a vehicle.

M. Enforcement

1. **General Rule.** Any driver who violates this rule of the Federal Motor Carrier Safety Regulations, 49 C.F.R. Part 382, may be subject to disciplinary action up to and including dismissal, except to the extent that any state or federal law requires otherwise. This rule is based on the general authority of M.S.A.D. #49 as an employer.
2. **Removal from Duty.** Any driver who tests positive for alcohol concentration of 0.02 or above or drug use shall immediately be relieved from duty, without pay, for a minimum of twenty-four (24) hours. No such driver shall be returned to duty, if at all, until the

provisions of this rule and the federal regulations have been satisfied.

3. **Disciplinary Action.** An employee receiving a test indicating a blood alcohol concentration of 0.04 or above or a positive test for controlled substances shall be dismissed from employment except to the extent that any state or federal law requires otherwise or the superintendent determines that compelling mitigating circumstances exist. A test indicating a blood alcohol concentration of 0.02 but less than 0.04 shall be grounds for discipline, up to and including dismissal, except as limited by law. The rules in this subsection are based on the general authority of M.S.A.D. #49 as an employer.
4. **Referral.** A driver who violates District prohibitions listed in Section E above will be given the names, addresses and telephone numbers of substance abuse professionals and counseling programs available to evaluate and resolve drug and alcohol related problems. The driver shall be evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems associated with drug use or alcohol misuse.
5. **Conditions of Reinstatement.** Before a driver is returned to safety-sensitive duties, if at all, the driver must:
 - a. Have been evaluated by a substance abuse professional;
 - b. Have complied with any recommended treatment; and
 - c. Have taken a return-to-duty test with a result indicating an alcohol concentration level of less than 0.02 and/or a verified negative test for controlled substances.
6. **Other Rules.** Nothing contained in this Administrative Rule shall prevent the District from establishing and enforcing independent rules 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 rules, up to and including dismissal.

N. Information

The Program Administrator will provide each driver subject to the Federal Motor Carrier Safety Regulations with a copy of this rule. In addition, the Program Administrator will provide printed material which describes the effects of alcohol and/or controlled substances use or abuse on the individual's health, work and personal life, as well as information on the signs and symptoms of an alcohol or controlled substances problem. Each driver must sign a statement certifying that he/she has received a copy of the above materials.

O. Notification

The District will 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 employment application.

The District will notify a driver of the results of a drug test if the test results are verified positive. The District will also tell the driver which controlled substances were verified positive.

Approved: May 5, 2007