

## ALCOHOL AND DRUG-TESTING OF BUS DRIVERS REGULATION

### 1.0 Purpose

The United States Department of Transportation (hereinafter referred to as the "DOT") has issued regulations (49 CFR parts 40, 382, 391, 392, and 395) (hereinafter referred to as the "Regulations") pursuant to the Omnibus Transportation Employee Testing Act of 1991 (P.L. 102-143) (hereinafter referred to as the "Omnibus Act") which govern the use of drugs and alcohol by commercial motor vehicle drivers, and which require the Bethlehem Central School District (hereinafter referred to as the "District") to conduct mandatory drug and alcohol testing of covered drivers at the times and under the conditions described in this Administrative Regulation. The Regulations require testing to begin on January 1, [1995 or 1996]. The purpose of this Administration Regulation is to comply with these requirements and to implement Board of Education Policy No. 6.7 dated January 4, 1995.

### 2.0 Applicability

- 2.1 Under the district's Policy, drug and alcohol testing will be conducted on any current and/or prospective "driver" who may be required to operate a "commercial motor vehicle" (as these terms are defined in this Administrative Regulation). The district will also obtain assurance once every six months from its independent contractors that provide covered drivers for district work, that such drivers are participating in an alcohol and drug testing program consistent with the Regulations.
- 2.2 All applicants for positions with the district as a driver of a commercial motor vehicle (regardless of whether they are new applicants or transfers) will be notified of the district's position with the district and that any offer of apply for a covered driver position with the district and that any offer of employment as such a driver will be conditioned on compliance therewith.

### 3.0 Definitions

- 3.1 *Accident* means any occurrence involving a commercial motor vehicle operating on a public road which results in:
  - a. a fatality; or
  - b. the driver being cited for a moving traffic violation, and (a) a person is injured because of the accident and the injuries require immediate medical treatment of the person away from the accident scene; or (b) one or more motor vehicles involved in the accident incurred disabling damage and must be transported away from the accident scene by a tow truck or another vehicle.
- 3.2 *Alcohol* means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

- 3.3 *Alcohol concentration* (or content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under the district's policy and Administration Regulation as described herein.
- 3.4 *Alcohol use* means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.
- 3.5 *Commercial motor vehicle* means a motor vehicle or combination of motor vehicles used to transport passengers or property if the motor vehicle:
- a. Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
  - b. Has a gross vehicle weight rating of 26,001 or more pounds; or
  - c. Is designed to transport 16 or more passengers, including the driver, or is used by or on behalf of the district to transport students, regardless of the capacity of such vehicle; or
  - d. Is of any size and is used in the transportation of materials found to be hazardous for the purpose of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).
- 3.6 *Confirmation test for alcohol testing* 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 testing 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. (Gas chromatography/mass spectrometry [GC/MS] is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines and phencyclidine).
- 3.7 *Controlled Substance* means:
- a. any substance listed on Schedule I of Appendix D to Subchapter B of Title 49 of the Code of Federal Regulations or other substance identified in Schedule I;
  - b. an amphetamine or any formulation thereof (including, but not limited to "pep pills" and "bennies");
  - c. a narcotic drug or any derivative thereof; or
  - d. any other substance, to a degree which renders the driver incapable of safely operating a motor vehicle.
- 3.8 *DHHS*. The Department of Health and Human Services or any designee of the Secretary of the Department of Health and Human Services.
- 3.9 *Driver* means any employee who operates a commercial motor vehicle. This includes, but is not limited to full-time, regularly employed drivers and casual, intermittent or occasional drivers who operate a commercial motor vehicle at the direction of or with

- the consent of the district. For the purposes of pre-employment/pre-duty testing only, the term driver includes a person applying to the district to drive a commercial motor vehicle.
- 3.10 *Medical Review Officer (MRO)*. A licensed physician responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his/her medical history and any other relevant bio-medical information.
- 3.11 On duty time means all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work.
- 3.12 *Performing a safety-sensitive function*. A driver is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.
- 3.13 *Refuse to submit* (to an alcohol or controlled substances test) means that a driver (i) Fails to provide adequate breath for testing without a valid medical explanation after he/she has received notice of the requirement for breath testing in accordance with the provisions of the district's Policy and Administration Regulation, (ii) 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 in accordance with the provisions of the district's Policy and Administrative Regulation, or (iii) engages in conduct that clearly obstructs the testing process.
- 3.14 *Safety-sensitive function* include:
- a. All time at or on district property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the district;
  - b. All time inspecting equipment as required by 49 CFR §§392.7 and 392.8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
  - c. All time spent driving a commercial motor vehicle;
  - d. All time, other than driving time, in or upon any commercial motor vehicle;
  - e. All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle;
  - f. All time spent performing the driver requirements of 49 CFR §§ 392.40 and 392.41 relating to accidents; and
  - g. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.
- 3.15 Screening test (also known as initial test). In alcohol testing, it means an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in his or her system. In controlled substance testing, it means an immunoassay screen to eliminate "negative" urine specimens from further consideration.

- 3.16 Substance abuse professional (SAP) 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 and/or clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

#### 4.0 *Prohibited Activities*

- 4.1 The Regulations expressly prohibit drivers from:
- a. reporting for duty or remaining on duty requiring the performance of safety-sensitive functions while the driver has an alcohol concentration of 0.04 or greater;
  - b. possessing any amount of alcohol (including alcohol found in medications, food, or other alcohol-containing products) while on duty or operating a commercial motor vehicle, unless the alcohol is manifested and transported as part of a shipment;
  - c. using alcohol at any time while performing any safety-sensitive function;
  - d. using alcohol within four hours prior to performing any safety-sensitive function;
  - e. using alcohol for eight hours following an accident (as defined in this Administrative Regulation) or until he or she undergoes a post-accident alcohol test, whichever occurs first;
  - f. refusing to submit to an alcohol or controlled substance test (as defined in this Administrative Regulation);
  - g. reporting for duty, remaining on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substances, except when the use is pursuant to the instruction 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;
  - h. failing to inform the district that he/she is using any therapeutic drug or other substance prescribed by a physician. In the event such physician prescribed treatment is being utilized, such driver must inform the district and provide said district with a written statement by his or her physician that the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle; and
  - i. reporting for duty, remaining on duty or performing safety-sensitive functions when the driver tests positive for controlled substances.
- 4.2 Drivers are also prohibited from failing to inform the district, consistent with existing district rules that may require such notification, that the driver is using drugs other than therapeutic drugs.

- 4.3 Any violation of the Omnibus Act, the Regulations, the district's policy regarding Controlled Substance and Alcohol Testing, this Administrative Regulation and the district's Drug and Alcohol Testing Educational Material is also considered prohibited conduct.
- 4.4 Drivers (excluding applicants for covered driving positions) who violate these prohibitions will be subject to the actions mandated by the DOT as described in this Administrative Regulation. Drivers who violate these prohibitions may also be subject to disciplinary action by the district, up to and including discharge, in a manner consistent with the DOT regulations, the district's pre-existing policies, practices, and any applicable laws and the collective bargaining agreement.

5.0 *Required Testing*

- 5.1. The district is required by DOT to conduct tests under the following conditions or times:
  - a. before a driver-applicant is hired or an existing employee seeking to become a driver performs safety-sensitive functions ("pre-employment/pre-duty" testing) as described in 49 CFR § 382.301;
  - b. following certain accidents (post-accident testing) as described in 49 CFR § 382.303;
  - c. on a random basis as described in 49 CFR § 382.305;
  - d. for reasonable suspicion as described in 49 CFR §382.307;
  - e. return-to-duty testing after engaging in prohibited conduct as outline in Section 4.1 of this Regulation as described in 49 CFR § 382.309; and
  - f. follow-up testing as described in 49 CFR § 382.311 for individuals in need of assistance in resolving problems associated with alcohol misuse and/or use of controlled substances.
- 5.2. With respect to Section 5.1 (i) above, any applicant for a covered driving position who refuses or fails to execute the acknowledgement that he or she has received and read the district's Drug and Alcohol Testing Educational Material, who refuses or fails to submit to a pre-employment/pre-duty drug and alcohol test as directed, or whose result is positive for either test, will not be considered eligible to work as a driver for the district. In addition, existing workers applying for driver positions may be subject to discipline, up to and including discharge, in a manner consistent with the district's pre-existing policies, practices, and any applicable laws and the collective bargaining agreement.

6.0 *Methods of Testing*

- 6.1 To ensure the integrity and accuracy of each test, all specimen collection, analysis, and laboratory procedures shall be conducted in accordance with DOT's procedural protocols and safeguards, as set forth in Part 40 of Title 49 of the Code of Federal Regulations. This includes, among other things: (i) procedures to ensure the correct identity of each driver at the time of testing; (ii) a chain-of-

custody procedure to ensure that the driver's specimen is not tampered with; (iii) the use of a trained breath alcohol technicians (BAT) and DOT approved testing devices for conducting alcohol tests; (iv) the use of a DHHS-certified laboratory; (v) the confirmation or an initial positive drug screen by a second analysis using gas chromatography/mass spectrometry (GCMS); (vi) the confirmation of an initial positive alcohol screen by a second analysis; (vii) the district's appointment of a qualified Medical Review Officer (MRO) to review the drug test results before they are reported to the district's designated representative. For purposes of complying herewith, the Board of Education shall, by separate action, appoint a MRO to serve at its pleasure and shall act in an expeditious manner to fill any vacancy in such position.

- 6.2 To further facilitate the integrity and accuracy of each test, the district will provide drivers with written and/or oral instructions regarding the conduct of the specific test before each testing event. The district considers all such instructions to be a part of the district's policy and the district's administrative regulation. Drivers who refuse or otherwise fail to comply with all such instructions will be subject to disciplinary action, up to any including discharge, in a manner consistent with the district's pre-existing policies, practices, and any applicable laws and the collective bargaining agreement.

## 7.0 Test Results

### 7.1 For Drug Tests

7.11 Before a driver's test result will be confirmed positive for drugs, the driver will be given the opportunity to speak with the district's MRO and demonstrate that there was a legitimate medical explanation for the positive test result. If the MRO determines that a legitimate medical reason does exist, the test result will be reported to the district as "negative." If the MRO determine that a legitimate medical reason does not exist, the test result will reported to the district as a "confirmed positive."

7.12 In the event that the test result of a driver's primary specimen is confirmed positive, the driver will be notified by district and advised that he/she has 72 hours to request that the MRO send his/her secondary specimen to a second, DHHS-approved laboratory for analysis. Pending the outcome of this additional analysis, the driver will be prohibited from performing and safety-sensitive functions and, when appropriate, be given a temporary alternative assignment.

### 7.2 For Alcohol Tests

7.21 In the event that the driver provides an adequate breath specimen and the initial test registers an alcohol concentration level that is less than 0.02 or greater, the test result will be reported as a "negative," and no additional test will be required at that time.

- 7.22 In the event that the driver provides an adequate breath specimen and the initial test registers an alcohol concentration level of 0.02, or greater, a second, confirmatory test will be performed. In the event that the driver provides an adequate breath specimen and the confirmatory test registers less than 0.02, the test result will be reported to the district as “negative.”
- 7.23 Any driver whose confirmatory test registers 0.02 or more but less than 0.04 will be prohibited from performing any safety-sensitive function until the driver’s next regularly-scheduled duty period, but for no less than 24 hours after the test is given. Such a driver may also be subject to additional disciplinary action by the district, up to and including discharge, in a manner consistent with the district’s pre-existing policies, practices, and any applicable laws and the collective bargaining agreement.
- 7.24 A driver who, after providing an adequate breath specimen, has a confirmatory test which registers 0.04 or greater will, at a minimum be suspended from performing safety-sensitive functions until the requirement of 49 CFR §382.605 are met, and will be subject to additional disciplinary action by the district, up to and including discharge, in a manner consistent with the district’s pre-existing policies, practices, and any applicable collective bargaining agreement.

## 8.0 Consequences for Engaging in Prohibited Activities

- 8.1 Except as provided in Section 5.2 of this Administrative Regulation involving pre-employment/pre-duty testing of applicants, any driver engaging in prohibited conduct will be prevented from performing any safety-sensitive functions. In addition, such drivers will be evaluated by a disinterested SAP, who shall determine what assistance, if any, the driver needs in resolving problems associated with alcohol and/or controlled substance use.
- 8.2 Except as provided in Section 5.2 of this Administrative Regulation involving pre-employment/pre-duty testing of applicants, any driver engaging in conduct prohibited by Section 4.1 of this Administrative Regulation must satisfy and return-to-duty testing requirements and referral, evaluation and treatment program prescribed by a SAP as outlined in 49 CFR part 382, subpart F, before he/she may be permitted to perform safety-sensitive functions.
- 8.3 Except as provided in Section 5.4 of this Administrative Regulation involving pre-employment/pre-duty testing of applicants, any driver engaging in conduct prohibited by Section 4.1 of this Administrative Regulation will be subject to disciplinary action by the district, up to and including discharge, in a manner consistent with the district’s pre-existing policies, practices, and any applicable laws and the collective bargaining agreement. In addition, a driver whose test result is confirmed positive will also be subject to civil and criminal penalties imposed by DOT or State Law.

8.4 Each driver who has engaged in conduct prohibited by Section 4.1 shall be advised by the district of the resources available to the driver in evaluating and resolving problems with alcohol and controlled substance use, including the names, addresses, and telephone numbers of SAPs and counseling and treatment programs.

8.5 Appeal Procedures

8.51 Upon a positive alcohol test and/or controlled substance test, a driver may file an appeal with the district's Superintendent of Schools (or other district-designated hearing officer) by submitting written notice of the grounds for said appeal within five days after the employee receives notice of the first test results. For purposes hereof, such appeal may be heard by either the Superintendent or Assistant Superintendent for Business, at the option of the district.

8.52 Pending the resolution of the appeal, no disciplinary action shall be taken; provided, however, that DOT-mandated actions (e.g., removal from safety-sensitive functions) shall not be deemed to be "disciplinary action" within the meaning of this rule; provided further that this rule shall not require the district to hold disciplinary action in abeyance beyond any applicable status of limitations, as set forth in the law or a collective bargaining agreement, unless the employee (and in the case of a collective bargaining agreement, his union) waive the said statute of limitations, in writing.

8.53 Following receipt of an employee's notice of appeal, the Superintendent shall offer the employee an opportunity to be heard regarding same. The employee may be accompanied by an attorney and/or majority union representative to this meeting. The said meeting is intended to be informal in nature, rather than a trial-like evidentiary hearing.

8.54 The Superintendent shall provide the employee and any representative who may appear on his or her behalf with a written decision deciding the appeal. In deciding an appeal from a positive alcohol or controlled substance test result, the Superintendent shall take into account the original test result(s), any re-testing done by the employee at the employee's expense, and any other pertinent information that the employee or district may provide. In deciding an appeal from a positive controlled substance test result, the Superintendent shall also take into account the test results pertaining to the split sample.

9.0 District and MRO Communications

9.1 Drivers who are tested for drugs are required to contact the district and the district's MRO daily while awaiting the results of their tests. Drivers are also required to advise the district of their whereabouts and the telephone number where they can be reached during this time.

- 9.2 A driver who refuses or fails to contact the district and the district's MRO will be considered insubordinate and subject to disciplinary action, up to any including discharge, in a manner consistent with the district's pre-existing policies, practices, and any applicable collective bargaining agreement. In addition, a driver who fails to contact the district and the district's MRO may waive his/her right, under this Administrative Regulation, to speak with the district's MRO before a test is confirmed positive.

10.0 Information on Drugs and Alcohol

- 10.1 Each driver will be provided with the district's Drug and Alcohol Testing Educational Material and information concerning: (i) the effects of drugs and alcohol on an individual's health, work, and personal life; (ii) the signs and symptoms of a drug or alcohol problem; and (iii) the available methods of intervention and treatment when a problem does exist.
- 10.2 All questions concerning the educational materials provided by the district, or about the district's Policy or Administrative Regulation, should be directed to appropriate person identified on the "Program Contracts" list which accompanies this Administrative Regulation.

11.0 Quality Assurance/Quality Control

- 11.1 As provided in 49 CFR part 40, the district will submit three blind performance test specimens for each 100 employee specimens it submits, up to a maximum of 100 blind performance test specimens submitted per quarter. These specimens will be either blank samples (containing no drugs) or two separately labeled portions of a specimen from the same non-covered employee.
- 11.2 In the event of a false positive error, the district shall follow the procedures mandated by 49 CFR §40.31.

12.0 Program Confidentiality

- 12.1 The results of all individual drug and alcohol tests will be kept in a secure location with controlled access.
- 12.2 All individual test results will be considered confidential. The release of an individual driver's results will only be given in accordance with an individual driver's written authorization, or as is otherwise required by DOT's regulations, or by other applicable federal or state law, PROVIDED HOWEVER, that nothing contained herein shall be construed to prevent the use of such results in any appeal pursuant hereto or in any disciplinary proceeding or prosecution under Federal or State laws.
- 12.3 The district shall (1) maintain records of its alcohol misuse and controlled substances use prevention programs, (2) prepare, maintain and report a summary of the results of its testing programs, and (3) ensure that access to such records may only be obtained through the methods outlined in the Regulations, as provided in 49 CFR part 382, subpart D.

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