

POLICY

SOUTH ORANGE MAPLEWOOD BOARD OF EDUCATION

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COMMERCIAL DRIVER'S LICENSE CONTROLLED SUBSTANCE AND ALCOHOL USE
TESTING (M)

4219 COMMERCIAL DRIVER'S LICENSE CONTROLLED SUBSTANCE AND ALCOHOL USE TESTING (M)

M

The Board of Education is committed to ~~maintaining~~ a safe, efficient, ~~and~~ alcohol and drug-free workplace that protects the district's students as well as the health and safety of its employees and the general public.

The Board requires all ~~drivers-employees of the Board~~ performing any safety-sensitive function are free of drugs and alcohol and will test those employees who operate a commercial motor vehicle in accordance with 49 ~~C.F.R.-CFR~~ 382 et seq. and 49 ~~C.F.R.-CFR~~ 40 et seq. For the purpose of this Policy "employee" means a person required to have a Commercial Driver's License (CDL) in the performance of their job responsibilities. Safety-sensitive function as defined by 49 ~~C.F.R.-CFR~~ 382.107 means ~~all~~ any time from the time an ~~employee driver~~ begins work or is required to be in readiness to work until the time the driver is relieved from work and from all responsibility for performing work. Safety-sensitive function shall include:

1. All time at the terminal, facility, or any public property, waiting to be dispatched, unless relieved from duty;
2. All time inspecting equipment as required by Federal law 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 in operation;
4. All time, other than driving time, in or upon the commercial motor vehicle except time spent resting in an area defined as a sleeping berth;
5. All time loading and 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, or in giving or receiving receipts for shipments loaded and unloaded; and
6. ~~All time spent performing driver requirements related to accidents; and~~



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- ~~67.~~ All time repairing, obtaining assistance, or remaining in attendance upon a disabled, with the vehicle.
8. ~~All time spent providing a breath sample or urine specimen, including travel time to and from the collections site, in order to comply with the random, reasonable suspicion, post-accident or follow-up testing required by 49 C.F.R., CFR part 382 when directed by a motor carrier;~~
-
- ~~9.~~ All time performing any other work in the capacity, employ or service of a motor carrier; and
-
- ~~10.~~ All time performing any compensated work for a person who is not a motor carrier.

The Omnibus Transportation Employee Testing Act of 1991 requires all operator-s of commercial motor vehicles subject to the CDL, Commercial Drivers License requirements to be tested for controlled substances and alcohol. Federal regulations of the U.S. Department of Transportation require that any employee using a CDL may school bus drivers as well as drivers of private carriers of passengers contracted by the Board be required to submit to alcohol and controlled substance testing in accordance with 49 C.F.R., CFR Part 40.

The Board may contract with a service agent to provide the testing services as required by Federal Regulations. The Board directs the Superintendent (designated official) or his/her designee to serve as the Designated Employer Representative (DER) of the Board of Education. The Board may contract with a service agent to provide the testing services as required by Federal law. In the event the Board contracts with a service provider for transportation, the Board designee will ensure all transportation contractors comply with the drug and alcohol testing requirements of Policy 4219 pursuant to 49 CFR 382 et seq. and 49 CFR 40 et seq. and to oversee the implementation of this policy.

No employee at any work site will possess, manufacture, use, sell, or distribute any quantity of any controlled substance, lawful or unlawful, which in sufficient quantity could result in impaired performance, with the exception of substances administered by or under the instructions of a physician. The provisions of this policy apply to marijuana regardless of whether it was administered by or under the instructions of a physician. No employee shall perform safety-sensitive functions within four hours after using alcohol and the district will

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not permit an employee that used alcohol within four hours of performing safety-sensitive functions to perform such functions if the district has actual knowledge of the use, in accordance with 49 CFR 392.5.

Violations

- Any violation of this Policy may result in discipline, up to and including termination.

Prohibited Substances

- The presence of any of the controlled substances, listed in 49 CFR 40.87, in the body, as evidenced by the results of the initial screening and subsequent confirmatory analysis provided in this Policy, is prohibited for any employee assigned to a classification covered by this Policy. All cutoff concentrations shall be in accordance with 49 CFR 40.87. All test results shall be measured against the cutoff concentrations outlined in 49 CFR 40.87.

Testing Procedures

- All testing for controlled substances will be conducted in accordance with 49 CFR 40, Subparts A, B, C, D, E, F, G, H and I. The district will only test for drugs or classes of drugs in accordance with 49 CFR 40.85. Testing for alcohol will be conducted in accordance with 49 CFR 40, Subparts J, K, L, M and N.

Definitions

1. ~~1.~~ "Alcohol use" means the drinking or swallowing of any beverage, liquid mixture or preparation (including medication) containing alcohol.
2. "Aliquot" means a fractional part of a specimen used for testing. It is taken as a sample representing the whole specimen.
2. "Confirmatory Drug Test" means a second analytical procedure performed on an aliquot of the original ~~urine~~ specimen to identify and quantify the presence of a specific drug or drug metabolite.
3. "Confirmed Drug Test" means a confirmation ~~drug-test~~ result received by a Medical Review Officer (MRO) from a ~~certified~~ laboratory.

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4. "Controlled substances" means those substances identified in 49 ~~C.F.R.-CFR~~ 40.85.
5. "CCF" means the Federal Drug Testing Custody and Control Form.
6. "Designated Employer Representative" (DER) is an employee of the district authorized to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The DER shall receive test results and other communications for the employer, consistent with the requirements of this policy and 49 ~~C.F.R.-CFR~~ 40. Service agents cannot act as a DER.
7. "FMCSA" means Federal Motor Carrier Safety Administration.
8. "Initial Drug Test (also known as a "Screening drug test")" means the test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.
9. "Initial ~~specimen v~~Validity ~~Screening~~test" means the first test used to determine if a urine specimen is adulterated, diluted or substituted, or invalid.
10. "Medical Review Officer" is a licensed physician responsible for receiving and reviewing laboratory results generated by the district's drug testing program and evaluating medical explanations ~~f~~or certain drug test results.
10. "Possess" includes, but is not limited to, means either in or on the driver's person, person-al effects, motor vehicle, or areas substantially entrusted to the control of the driver.
11. "Service agent" is any person or entity, other than an employee of the Board, who provides services specified under 49 ~~C.F.R.-CFR~~ 40 to the Board.
12. "Substance Abuse Professional (SAP)" is a person who evaluates employees who have violated a Federal or State drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare. An individuals permitted to act as a ~~Substance Abuse~~



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Professionals/SAP must possess the credentials as outlined in 49 C.F.R.-CFR 40.281.

13. "Work Site" means any motor vehicle, office, building, yard or other location at which the driver is to perform work or any other school district property or at any school district event.

Prohibited Substances

~~As evidenced by the results of the initial screening and subsequent confirmatory analysis provided in this policy, the presence of any of the controlled substances as defined in this policy is prohibited for any employee assigned to a classification covered by this policy. All cutoff concentrations are as per 49 C.F.R. 40.87. Except for alcohol, they are expressed in nano grams per milliliter (ng/mL). Alcohol is expressed as a percentage.~~

Type of Drug or Metabolite	Initial Test	Confirmation Test
Marijuana metabolites Delta-9 tetrahydrocanna-Binol- 9-carboxylic acid (THC)	50	15
Cocaine metabolites (Benzoylcegonine)	300	150
Phencyclidine (PCP)	25	25
Amphetamines	1,000	-
Amphetamine	-	500
Methamphetamine	-	500*
Opiate metabolites	2,000	-
Codeine	-	2,000
Morphine	-	2,000
6-acetylmorphine (6-AM)	-	10**
Alcohol	.02 or higher	.02 or higher

~~(*Specimen must also contain amphetamine at a concentration greater than or equal to 200 ng/mL.)~~



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~~(**Test for 6 AM in the specimen. Conduct this test only when specimen contains morphine at a concentration greater than or equal to 2000 ng/mL.)~~

~~No driver at any work site will possess, manufacture, use, sell, or distribute any quantity of any controlled substance, lawful or unlawful, which in sufficient quantity could result in impaired performance. A limited exception may be made for possession of substances administered by or under the instructions of a physician. No driver shall perform safety-sensitive functions within four hours after using alcohol and the district will not permit a driver that used alcohol within four hours of performing safety sensitive functions to perform such functions if the district has actual knowledge of the use.~~

~~Violations~~

~~Any violation of this policy may result in discipline, up to and including termination.~~

~~Testing Procedures~~

~~All testing for controlled dangerous substances will be conducted in accordance with 49 C.F.R. CFR Part 40, Subparts A, B, C, D, E, F, G, H and I. The district will only test for the above stated five drugs or classes of drugs in accordance with 49 C.F.R. 40.85. Testing for alcohol will be conducted in accordance with as 49 C.F.R. CFR Part 40, Subparts J, K, L, M and N.~~

Categories of Testing

For the purpose of this policy, the occurrence of the following circumstances/instances shall require an employee to submit to a controlled substance and alcohol screening:

A. Pre-Employment Testing

An individual who has applied for and has been selected to operate a Board vehicle shall, before beginning employment with the Board, submit to a controlled substance screening in conjunction with any required physical examination as per Policy No. 4160. Such screening shall be conducted in accordance with the procedures set forth in this policy and 49 C.F.R. 40. No individual receiving a positive confirmed test result will be employed by the Board.

~~An exception to the pre-employment screening may be made if the prospective employee has participated in a controlled substance testing program that met the~~



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~~requirements of 49 C.F.R. 382 et seq. within the previous thirty days and while participating in that program either:~~

~~An employer is not required to administer a controlled substances test required by 49 CFR 382.301(a) if:~~

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~~a. The employee has participated in a controlled substances testing program that met the requirements of 49 CFR 382 et seq. within the previous thirty days; and~~

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~~b. The employee while participating in that program either:~~

1. Was tested for controlled substances within the past six months (from the date of application to the district), or

2. Participated in the random controlled substances testing program for the previous twelve months (from the date of application ~~to the district~~ with the employer); ~~and~~

~~3.c.~~ The DER must ensure that no prior employer, to the DER's knowledge, has records of a violation of a controlled substance testing program within the previous six months.

If an individual is so exempted, the ~~Superintendent or his/her designee~~ DER shall contact the controlled substances testing programs in which the ~~driver-individual~~ participated and shall obtain and retain from the testing program(s) the following information in accordance with 49 ~~C.F.R.-CFR~~ 382.301(c):

~~4.a.~~ Name and address of the program;

~~2b.~~ Verification of the ~~driver's-individual's~~ participation;

~~3c.~~ Verification that the program conforms to ~~F~~ federal guidelines;

~~4d.~~ Verification the ~~driver-individual~~ qualified under the law and did not refuse to be tested for controlled substances;

~~5e.~~ The date the ~~driver-individual~~ was last tested for controlled substances; and

~~6f.~~ The results of any tests taken within the ~~last-previous~~ six months and any other violations.



[Optional for Districts that Conduct Pre-Employment Alcohol Tests]

In accordance with 49 ~~C.F.R.~~ CFR 382.301(d), the ~~district Board~~ will conduct pre-employment alcohol tests before the first performance of safety-sensitive functions by a new ~~covered~~ employee or someone who has transferred to a position involving the performance of safety-sensitive functions. The alcohol test will be conducted after making a contingent offer of employment or transfer, subject to the ~~individual employee~~ passing the pre-employment alcohol test. All alcohol testing will be completed in accordance with 49 ~~C.F.R.~~ CFR 40 et seq. ~~A covered employee will not be offered employment and/or the transfer unless the result of the test indicates an alcohol concentration of less than 0.04. An employee will:~~

Not begin working until they have received clearance from the Federal Motor Carrier Safety Administration, Drug and Alcohol Clearance House.

An ~~individual employee~~ who has applied for and has been selected to operate a Board vehicle or any existing employee transferring into a new position requiring the employee now required to operate a Board vehicle, shall submit a written consent authorizing the ~~district Board~~ to obtain the following information from other employers who have employed the employee during any period during the two years before the date of the ~~individual's employee's~~ application ~~date~~ or transfer into the new position. The written consent from the ~~individual employee~~ will permit the ~~Designated Employer Representative (DER)~~ to obtain the following information from previous Division of Transportation (DOT)-regulated employers:

- ~~a.~~ Alcohol tests with a result of 0.04 or higher alcohol concentration;
- ~~2b.~~ Verified positive drug tests;
- ~~3c.~~ Refusals to be tested (including verified adulterated or substituted drug test results);
- ~~4d.~~ Other violations of DOT agency drug and alcohol testing regulations; and

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Commented [1]: Not begin working until they have received clearance from the Federal Motor Carrier Safety Administration, Drug and Alcohol Clearance House.

Commented [2]: Currently in District policy



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~~5e.~~ With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests). If this information is not available from the previous employer, the DER must seek to obtain this information from the ~~individual~~employee.

The DER will obtain and review this information before the employee first performs ~~any driving and/or~~ safety-sensitive functions. If this is not feasible, the DER will not permit the ~~individual~~employee to perform safety-sensitive functions ~~work~~ after thirty days from the ~~individual's~~employee first performed safety-sensitive functions, date of employment in the position unless the DER has obtained or made and documented a good faith effort to obtain this information.

~~2B.~~ Random Testing

~~A covered~~Every employee shall ~~be subject to~~ submit to random alcohol and controlled substance testing on an unannounced and random basis resulting from the selection by a random generation methodology in accordance with 49 ~~C.F.R.~~CFR 383.305-(i). Random testing will be spread reasonably throughout any given calendar year.

The minimum annual percentage rate for random alcohol testing shall be ten percent~~40%~~ of the average number of driver positions. The minimum annual percentage rate ~~for~~ random controlled substances testing shall be 50%~~twenty-five percent~~ of the average number of driver positions. The minimum annual percentage rates may be adjusted ~~These rates may be adjusted~~ as determined by the FHCSA ~~WA (Federal Highway Administration)~~ Administrator in accordance with 49 ~~C.F.R.~~CFR 382.305.

~~Drivers~~Employees shall only be random tested when performing safety-sensitive functions or immediately prior to or immediately following the performance of safety-sensitive functions.

~~3.~~ Post-Accident Testing

The involvement by an employee in a motor vehicle collision while operating a Board vehicle when such accident results in property damage or personal injury, may trigger a post-accident drug and alcohol test.



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As soon as practical following an occurrence, the DER will require post-accident alcohol screening for each of the surviving drivers:

~~1a.~~ Who was performing safety-sensitive functions with respect to a vehicle, if the accident involves the loss of human life; or

~~2b.~~ Who receives a citation within eight h-ours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:

(1) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

~~(2)a-~~ One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

~~3c.~~ If the alcohol test is not administered within two h-ours following the accident, the DER will prepare and maintain on file a record stating the reasons the test was not promptly administered. If the alcohol test is not administered within eight hours following the accident, the DER shall cease attempts to administer the alcohol test and shall prepare and maintain the same record. Records shall be submitted to the FMCSA upon request.

As soon as possible following an occurrence, the district will require post-accident controlled substance screening for each of the surviving drivers:

~~1a.~~ Who was performing safety-sensitive functions with respect to a vehicle, if the accident involves the loss of human life; or

~~2b.~~ Who receives a citation within thirty-two hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:

~~(1)a-~~ Bodily injury to any per son, who, as a result of the injury immediately receives medical treatment away from the scene of the accident; or



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- (2)b. One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.
- 3c. If the controlled substance test is not administered within thirty-two hours ~~s~~ following the accident, the DER shall cease attempts to administer the controlled substance test and shall prepare and maintain on file a the same record stating the reasons the test was not promptly administered. Records shall be submitted to the FMCSA up-on request.

A ~~driver-employee~~ who is subject to post-accident testing shall remain readily available for such testing or be deemed by the employer to have refused to submit for testing. (An driver-employee who is injured in an accident and requires medical care, shall submit to post-accident drug and controlled substance testing by the medical care facility providing the treatment or a designee of the Board if the facility is unable to provide the testing.) Nothing herein shall be construed to prevent the ~~driver-employee~~ from leaving the scene of the accident for the period required to obtain necessary assistance or to obtain emergency medical care.

D. Reasonable Suspicion Testing

The DER may require an driver-employee to submit to an alcohol and/or controlled substance test when the ~~driver-employee~~ is observed by a supervisor or school official who is trained in accordance with 4-9 ~~C.F.R.-CFR~~ 382.603 and causes the observer to have reasonable suspicion to believe the driver has violated 49 ~~C.F.R.-CFR~~ 382 et seq. Reasonable suspicion must exist to require the ~~driver-employee~~ to undergo a test and must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the ~~driver-employee~~. The observations may include indications of the chronic and withdrawal effects of controlled substances.

Reasonable suspicion alcohol testing is authorized only if the required observations are made during, just preceding, or just after the period of the work day the ~~driver-employee~~ is required to be in compliance with the testing requirements of 49 ~~C.F.R.-CFR~~ 382 et seq.

Reasonable suspicion testing may be required of an employee-driver while the ~~driver-employee~~ is performing, just before the ~~driver-employee~~ will perform, or just after the ~~driver-employee~~ has ceased performing safety-sensitive functions.



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If the alcohol test is not administered within two hours following the determination a reasonable suspicion test is required, the DER will prepare and maintain on file a record stating the reasons the test was not promptly administered. If the alcohol test is not administered within eight hours following the determination, the DER shall cease attempts to administer the alcohol test and shall state in the record the reasons for not administering the test.

No driver-employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the driver-employee is under the influence of or impaired by alcohol, as shown by the behavioral, speech and performance indicators of alcohol misuse. The driver-employee will also not be able to perform or continue to perform safety-sensitive functions until an alcohol test is administered and the driver's-employee's concentration measures less than 0.02 or twenty-four hours have elapsed following the determination that reasonable suspicion existed to require an alcohol test.

A written record of the observations leading to a reasonable suspicion test shall be made and signed by the supervisor and/or school official that made the observations. This record shall be made within twenty-four hours of the observed behavior or before the results of the test are released, whichever is earlier.

E. Return to Duty Testing

The district is not required to return an employee to a safety-sensitive position upon receipt of a confirmed drug and/or alcohol test.

The Designated Employer Representative (DER) may recommend to the Superintendent of Schools the individual's-employee's employment be terminated depending on the circumstances.

~~In the event the DER does not recommend termination~~The DER shall ensure that before an driver-employee returns to duty requiring the performance of a safety-sensitive function, the driver-employee shall undergo a return to duty alcohol test indicating a breath alcohol concentration of less than 0.02 and a controlled-substances test with a result indicating a verified negative result for controlled-substances use as required in 49 C.F.R.-CFR 40.305.



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~~Drivers-Employees~~ permitted to return to duty are required to take return-to-duty tests and shall be evaluated by a ~~Substance Abuse Professional~~ (SAP). These ~~individuals-employees~~ must participate in an assistance program prescribed by the SAP and as required in 49 ~~C.F.R.-CFR~~ 40 Subpart O.

The SAP will determine a written follow-up testing plan for any ~~individual employee~~ who has been permitted to return to work and has successfully complied with the SAP's recommendations for education and/or treatment. Such employees are subject to a minimum of six unannounced, follow-up drug screenings and alcohol tests over the following twelve months. The testing shall not exceed ~~sixty forty-eight additional~~ month-s. Alcohol follow-up testing shall be performed only when the ~~driver-employee~~ is performing safety-sensitive functions or immediately prior to performing or immediately after performing safety-sensitive functions. All follow-up testing will be completed in accordance with 49 ~~C.F.R.-CFR~~ 40.307. The SAP will comply with all reporting requirements of 49 ~~C.F.R.-CFR~~ 40.311.

The Board shall make the ultimate determination to return or not return an employee to a safety-sensitive position subject to any collective bargaining agreements, if any, or other legal requirements.

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Medical Review Officer (MRO) Notifications

The Board shall employ or contract with a medical review officer who is a licensed physician (M.D. or D.O.) and shall designate the ~~Medical Review Officer~~ MRO as the individual responsible for receiving laboratory results generated by the testing program. The MRO shall have knowledge of substance abuse disorders and have appropriate medical training to interpret and evaluate the ~~individual's-employee's~~ confirmed ~~drug positive test results~~ together with ~~his/her/their~~ medical history and other biomedical data. The ~~Medical Review Officer~~ MRO will perform all functions and responsibilities as required in 49 ~~C.F.R.-CFR~~ 49.121, ~~Subpart G-~~

Employer Notification

The ~~Medical Review Officer~~ MRO may report controlled substances test results to the DER by any means of communication; however, a signed, written notification must be forwarded within three business days of the completion of the MRO's e-valuation. The MRO must report all drug test results to the employer. The MRO may use a signed or



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stamped and dated legible photocopy of Copy 2 of the CCF to report test results or a written report that must include, at a minimum, the information required in 49 ~~C.F.R.-CFR~~ 40.163.

Split Specimen Tests

Split specimen testing will be conducted in accordance with 49 ~~C.F.R.-CFR~~ 40 Subpart H.

The MRO will notify the Superintendent of Schools or designee if split specimen testing is requested by the employee.

~~Under split sample collection procedures, the driver has seventy-two hours from the time of notification of a positive result to request the MRO to order a test of the split specimen. If the driver does not request a split specimen test within seventy-two hours, the driver may present to the MRO information documenting that serious injury, illness, lack of actual notice of the verified test result, inability to contact the MRO, or other circumstances unavoidably prevented the individual from making a timely request.~~

~~If the split specimen is unavailable or appears insufficient, the laboratory will continue the testing process of the primary specimen as the laboratory would normally. The laboratory will report the results for the primary specimen without providing the MRO information regarding the unavailable split specimen. In the event the MRO requests the split specimen be forwarded to another laboratory, the laboratory will report to the MRO the split specimen is unavailable for testing and the laboratory will provide the MRO with as much information as possible about the cause of the unavailability.~~

Designated Collection Facility

The Board shall designate the facility to be used for the collection of the specimen; provided, however, that the designated facility shall possess all required licenses and permits. The collection site will take place in a facility meeting the requirements of 49 ~~C.F.R.-CFR~~ 40 Subpart D. The DER will ensure the collection site meets the security requirements of 49 ~~C.F.R.-CFR~~ 40.43.

Designated Screening Laboratory

The Board shall designate the laboratory to which collected fluid samples will be forwarded for drug/alcohol screening. Drug testing must be certified by the Department of Health and Human Services (HHS) under the National Laboratory Certification Program



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(NLCP) for all testing required under 49 ~~C.F.R.-CFR~~ 40. The laboratory will perform all responsibilities as required in accordance with 49 ~~C.F.R.-CFR~~ 40 Subpart F.

Specimens

The normal screening methodology for controlled substances shall be urinalysis, collected by a trained representative of the ~~Board~~ Board with appropriate documentation at a site designated site and approved by the Board. The presence of alcohol will be determined by an Alcohol Screening Device (ASD) or an Evidential Breath Testing Device administered by an individual certified in accordance with 49 ~~C.F.R.-CFR~~ 40.211 and 49 ~~C.F.R.-CFR~~ 40.213.

Refusal to Submit

~~An employee driver~~ will be deemed as refusing to take a drug test ~~in accordance with the criteriaas~~ described in with 49 ~~C.F.R.-CFR~~ 40.191. ~~As per 49 C.F.R.-CFR 40.191, an individual refuses to take a drug test if he/she:~~

1. Fails to appear for any test (except a pre-employment test) within a reasonable time, as determined by the D-ER, consistent with applicable DOT agency regulations, after being directed to do so by the DER;
2. Fails to remain at the testing site until the testing process is complete. An employee who leaves the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test;
3. Fails to provide a urine specimen for any drug test required by this policy. An employee who does not provide a urine specimen because ~~he or she~~ has they left the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test;
4. Fails to permit the observation or monitoring of providing a specimen in the case of a directly observed or monitored collection in a drug test;
5. Fails to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;



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6. Fails or declines to take a second drug test the DER or collector has directed the ~~individual employee~~ to take;
7. Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DE-R under 49 CFR Sec. 40-.193(d). In the case of a pre-employment drug test, the ~~individual employee~~ is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment;
8. Fails to cooperate with any part of the testing process (e.g., refuses to empty pockets when so directed by the collector, behaves in a confrontational way that disrupts the collection process, fails to wash hands after being directed to do so by the collector); ~~or~~
9. Fails to follow the collection observer(s) instructions of which could be used to interfere with the collection process;
10. Possesses or wears a prosthetic or other device that could be used to interfere with the collection process; or
11. Admits to the collector or MRO ~~he/she has~~ they have adulterated or substituted the specimen.
9. ~~If the MRO reports the driver had a verified adulterated or substituted test result.~~

If the MRO reports the employee had a verified adulterated or substituted test result, the result will be deemed refusal to take a drug test.

If an ~~individual employee~~ refuses to participate in a part of the testing process, the collector or MRO, must terminate the portion of the testing process, document the refusal on the CCF (including in the case of the collector, printing the employee's name on Copy 2 of the CCF), immediately notify the DER by any means (e.g., telephone or secure fax machine) that ensures that the refusal notification is immediately received. A referral physician (e.g., physician evaluating a "shy bladder" condition or a claim of a legitimate medical explanation in a validity testing situation), must notify the MRO, who in turn will notify the DER. In addition, the collector must note the refusal in the "Remarks" line (Step 2), and sign and date the CCF. The MRO must note the refusal by checking the "~~R~~refused to ~~t~~est ~~because~~" box (Step 6) on Copy 2 of the CCF, and add the reason on the "Remarks"

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line. The MRO must then sign and date the CCF. When the ~~driver-employee~~ refuses to take a non-DOT test or to sign a non-DOT form, the ~~driver-employee~~ has not refused to take a DOT test. There are no consequences under DOT agency regulations for refusing to take a non-DOT test.

Record of Negative Screening

An employee required to submit to an alcohol and/or controlled substance screening as provided in this policy and whose screening results are negative may, at their option, have their personnel file documented to reflect the negative result.

Prescription Drugs

All bus drivers shall notify the DER of the use of any prescription drugs. The Board may require certification from the prescribing physician that the use of the prescription drug will not have an adverse ~~ae~~ffect on the driver's ability to properly perform safety-sensitive functions.

Consequences to Drivers Engaging in Prohibited Conduct

An employee whose screening produces a positive result for a prohibited substance who is permitted to return to work:

- ~~A~~1. Shall not be permitted to perform safety-sensitive functions;
- ~~B~~2. Shall be advised by the DER of resources available to them in evaluating and resolving problems associated with the misuse of alcohol or the use of controlled substances;
- ~~3~~C. Shall be evaluated by a ~~substance abuse professional~~SAP who shall determine what assistance, if any, is needed to resolve problems with alcohol or controlled substance use;
- ~~D~~4. Undergo, before returning to duty, a return to duty alcohol test indicating a breath level of less than 0.02 if the conduct involved alcohol or a controlled substance test with a verified negative result;



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- ~~E5.~~ If assistance was required, the employee must be evaluated by a ~~sub-stance abuse professional-SAP~~ to determine that the ~~driver-employee~~ has followed the rehabilitation program prescribed;
- ~~F6.~~ Be subject to unannounced follow up alcohol and/or controlled substance abuse testing; ~~and~~
- ~~7G.~~ Be subject to the disciplinary policy and regulations of the Board.

Return-to-Work Agreement

An employee who has ~~been permitted to returned~~ to work and who fails to comply with any of the terms of ~~the-a~~ Return to Work Agreement, if provided at the employer's discretion, shall be subject to disciplinary action which may include termination.

Maintenance and Retention of Records

The DER shall maintain and retain all records as required by federal regulation. Records shall include at least the following:

- ~~A1.~~ Records Related to the Collection Process
 - ~~1a.~~ Collection logbooks (if used);
 - ~~2b.~~ Documents related to the random selection process;
 - ~~3c.~~ Calibration documentation for Evidential Breath Testing Devices (EBT's);
 - ~~4d.~~ Documentation of Breath Alcohol Technician (BAT) training;
 - ~~5e.~~ Documentation of reasoning for reasonable suspicion testing;
 - ~~6f.~~ Documentation of reasoning for post-accident testing;
 - ~~7g.~~ Documents verifying a medical explanation for the inability to provide adequate breath or urine for testing; and
 - ~~8h.~~ Consolidated annual calendar year summaries.



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- ~~B~~2. Records Related to the ~~Driver's-Employee's~~ Test Results

 - ~~a~~1. Employer's copy of the alcohol test form, including results;
 - ~~2~~b. Employer's copy of the ~~controlled substance drug~~ test chain of custody and control form;
 - ~~3~~c. Documents sent to the employer by the ~~Medical Review Officer~~MRO;
 - ~~4~~d. Documentation of any ~~driver's-employee's~~ refusal to submit to a required alcohol or controlled substance test; and
 - ~~5~~e. Documents provided by a ~~driver-employee~~ to dispute results of test.
- ~~C~~3. Documentation of any Other Violations of Controlled Substance Use or Alcohol Misuse ~~Rules~~Policies
- ~~D~~4. Records Related to Evaluations and Training

 - ~~1~~a. Records pertaining to ~~Sub-stance Abuse Professionals~~-(SAP's) determination of ~~driver's-employee's~~ need for assistance;
 - ~~2~~b. Records concerning an ~~employee's driver's~~ compliance with ~~the~~ SAP's recommendations, and records related to education and training;
 - ~~3~~c. Materials on drug and alcohol awareness, including a copy of the employer's policy on drug use and alcohol misuse;
 - ~~4~~d. Documentation of compliance with requirement to provide drivers with educational material, including ~~driver's-employee's~~ signed receipt of materials;
 - ~~5~~e. Documentation of supervisor training; and
 - ~~6~~f. Certification that training conducted under this ~~rule-Policy~~ complies with all requirements of the ~~rule~~Policy.
- ~~E~~5. Records Related to Drug Testing



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- 1a. Agreements with collection site facilities, laboratories, ~~Medical Review Officers (MRO's)~~ and consortia;
- 2b. Names and positions of officials and their role in the employer's alcohol and controlled substance testing program;
- 3c. Monthly statistical summaries of urinalysis; and
- 4d. The employer's drug testing policy and procedures.

~~F6.~~ Required Period of Retention

Document to be maintained	Period required to be maintained
Alcohol test results indicating a breath alcohol concentration of 0.02 or greater	5 Years
Verified positive controlled substance test results	5 Years
Documentation of r Refusals to submit to required alcohol or controlled substance tests (including substituted or adulterated test results)	5 Years
Required e Calibration of Evidential Breath Testing Devices (EBT's)documentation	2 Years
<u>Records related to the administration of the alcohol and controlled substances testing program, including records of all driver violations</u>	<u>5 Years</u>



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All follow-up tests and schedules for follow-up tests	5 Years
-Driver evaluations and referrals	-5 Years
Substance Abuse Professional's (SAP's) evaluations and referrals	5 Years
-	-
A copy of each annual calendar year summary	5 Years
Records obtained from previous employers concerning alcohol and drug testing-	3 Years
Records related to the alcohol and controlled substances collection process (except calibration of evidential breath testing devices) and required training	2 Years
Records related to negative and canceled controlled substance test results-	1 Year
Negative and canceled controlled substance test results	1 Year
-	-
Alcohol test results indicating a breath alcohol concentration less than 0.02	1 Year
-	-
Records related to the education and training of breath alcohol technicians, screening test technicians, supervisors, and drivers shall be maintained by the employer while the individual	Indefinite time period 3 Years



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performs the functions which require the training and for two years after ceasing to perform those functions
~~Records obtained from previous employers concerning alcohol and drug testing~~

Other specific types of records shall be maintained in accordance with 49 CFR 382.401.

~~G7.~~ Location of Records

All required records shall be maintained in accordance with Policy ~~No.~~ 8320. Records shall be made available for inspection at the Board Offices within two business days after a request has been made by an authorized representative of the ~~Federal Highway Administration~~ FMCSA.

~~H8.~~ Annual Calendar Year Summary

The DER shall prepare and maintain an annual calendar year summary of the results of its alcohol and substance abuse testing programs. The summary shall be completed no later than March 15 of each year covering the previous calendar year. The DER upon request of the ~~Federal Highway Administration (FHWA)~~ FMCSA will provide the annual summary to that agency in the required format.

~~I9.~~ Employee Information Program

The Board will provide an employee information program. The DER will be responsible for implementing the program and shall ensure that each ~~driver~~ employee receives information in the manner specified below:

~~1a.~~ By receiving a copy of this policy and any subsequent revisions.

~~2b.~~ The DER will provide written notice to employees of the following information: Through attendance at a meeting at which a detailed discussion of the following is conducted:



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- a(1). The identity of the person designated by the employer to answer ~~driver-employee~~ questions about the materials;
- b(2). Which ~~drivers-employees~~ are subject to the alcohol misuse and controlled substance requirements;
- c(3). Explanation of what constitutes a safety-sensitive function, so as to make clear what period of the workday the driver is required to be in compliance;
- d(4). Specific information concerning ~~driver-employee~~ conduct that is prohibited;
- e(5). The circumstances under which an ~~employee driver~~ will be tested for alcohol and/or controlled substances;
- f(6). The procedures that will be used to test for the presence of alcohol and controlled substances;
- g(7). The requirement that an ~~employee-driver~~ submit to alcohol and controlled substance tests;
- h(8). An explanation of what constitutes a refusal to submit to an alcohol or controlled substance test;
- i(9). The consequences for ~~drivers-employees~~ found to have violated the prohibitions of this ~~rule~~ Policy, including the immediate removal of the ~~driver-employee~~ from safety-sensitive functions;
- j(10). Information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life. Signs and symptoms of an alcohol or controlled substances problem, and available methods of intervening when an alcohol or a control substances problem is suspected, including confrontation, referral to any employee assistance program and/or referral to management.

Omnibus Transportation
Employee Testing Act of 1991



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[49 CFR 40 et seq.](#)

[49 CFR 382 et seq.](#)

[49 CFR 395.2](#)

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~~[Act of 1991 49 C.F.R. CFR 40 et seq.](#)~~

~~[49 C.F.R. CFR 382 et seq.](#)~~

~~[49 C.F.R. CFR 395.2](#)~~

Adopted: 27 January 2003

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