EEAEAA-R - Drug and Alcohol Testing of School Bus Drivers - Administrative Procedure

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The Board of Directors of M.S.A.D. #35 is committed to the establishment of an alcohol and controlled substance testing program that meets all applicable requirements of the federal Omnibus Transportation Employee Testing Act of 1991, in addition to pertinent state laws and regulations. The purpose of the testing program shall be to help prevent accidents and injuries resulting from the misuse of alcohol and controlled substances by drivers performing safety-sensitive functions.

The following administrative procedure represents a summary of the main provisions found in federal regulations promulgated to effectuate drug and alcohol testing of bus drivers. The following procedure in no way attempts to modify said regulations, which should always be referred to when questions as to the implementation of this policy/ procedure arise.

I. Applicability

All persons operating a commercial motor vehicle in commerce in any state and subject to the commercial driver’s license requirements mandated under both federal and state laws, including the Omnibus Transportation Employee Testing Act of 1991, shall be subject to the drug and alcohol testing provisions herein contained.

II. Implementation

The Superintendent shall be responsible for implementing a drug and alcohol testing program that complies with procedures set forth in Title 49 Parts 40, 382, 390 and 395 of the Federal Code of Regulations. Such testing program shall include pre-employment/pre-duty drug testing, post-accident testing, random testing, reasonable suspicion testing, return-to-duty, and follow-up testing. M.S.A.D. #35 shall provide parties subject to testing with written notice of materials and information available to them as required by Part 382.

III. Controlled Substances

Controlled substances in this policy/procedure refer to those covered by the Omnibus Transportation Employee Testing Act of 1991, including marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP).

IV. Safety - Sensitive Function

Safety-sensitive function(s) in this policy/procedure refer to functions defined in 49 CFR §382.107 and §395.2 On-Duty Time, paragraphs (1) through (6).

V. Prohibitions

All drivers subject to this policy shall be prohibited from:

A. Using any alcohol while on duty and four (4) hours prior to going on duty:

B. Possessing alcohol while on duty;

C. Reporting for duty or remaining on duty while having an alcohol concentration of 0.02 or greater;

D. Using any alcohol for eight (8) hours following an accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first;

E. Refusing to submit to a required alcohol or controlled substance test(s);

F. Reporting for duty or remaining on duty when using any controlled substance, except when use is pursuant to the instructions of a physician who advised the driver that the substance does not adversely affect the driver’s ability to safely operate the vehicle; and

G. Reporting for duty, remaining on duty, or performing a safety-sensitive function, if the driver tests positive for a controlled substance.

VI. Required Testing

A. Pre-Employment Testing

Prior to the first time, a driver performs a safety-sensitive function for M.S.A.D. #35, the driver shall undergo testing for controlled substances. However, no driver shall be subjected to pre-employment controlled substance testing prior to having been offered a position. Employment is conditioned upon a **verified negative** controlled substance result.

B. Post-Accident Testing

As soon as practicable following an accident, each surviving driver will be subject to alcohol and controlled substance testing as follows:

1. Any driver performing safety-sensitive functions with respect to the vehicle if the accident involved loss of human life;
2. Any driver who receives a citation under State or local law for a moving violation arising from the accident; and

    a. Causes bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

    b. Incurs disabling damage as a result of the accident, requiring a motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

3. In addition, the following provisions will also apply.

A. Alcohol. If a test required under this section is not administered within two (2) hours following the accident, M.S.A.D. #35 shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test is not administered within eight (8) hours following the accident, M.S.A.D. #35 shall cease attempts to administer the test and shall prepare and maintain the same record. Records shall be submitted to the Federal Highway Administration (FHWA) upon request of the Associate Administrator.

B. Controlled Substances. If a test required by this section is not administered within thirty-two (32) hours following the accident, M.S.A.D. #35 shall cease attempts to administer the test and shall prepare and maintain on file a record stating the reasons the test was not promptly administered. Records shall be submitted to the FHWA upon request of the Associate Administrator.

C. Random Testing. All drivers subject to this policy/procedure will be subject to random and unannounced alcohol and controlled substance testing throughout the year. The minimum annual percentage rate for testing of bus drivers is as follows:

1. Random alcohol testing shall be a minimum of 10 percent of the number of driver positions each selection period; and
2. Random controlled substance testing shall be a minimum of 50 percent of the number of driver positions in each selection period.

D. Reasonable Suspicion Testing. All drivers subject to this policy/procedure shall submit to alcohol and controlled substance testing when the employer has reasonable suspicion to believe that the driver has violated the prohibitions found in Part V. of this procedure, with the exception of Part V. B. regarding alcohol possession. M.S.A.D. #35 shall base its determination that reasonable suspicion exists requiring the driver to undergo such testing on observations concerning appearance, behavior, speech or body odors of the driver. When controlled substances are at issue, observations may include indications of the chronic and withdrawal effects of controlled substances.

In addition, the following provision also applies.

1. **Alcohol**. Alcohol testing will be performed only if the aforementioned observations are made during, just preceding, or just after the period of the workday when the driver is required to be in compliance. If a test required under this section is not administered within two (2) hours following the reasonable suspicion determination, M.S.A.D. #35 shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required under this section is not administered within eight (8) hours following a determination that reasonable suspicion exists, M.S.A.D. #35 shall cease attempts to administer the test. M.S.A.D. #35 shall submit to the FHWA records of tests required by this section that were not completed within eight (8) hours according to the mandates of 49 CFR (3).
2. **Controlled Substances**, M.S.A.D. #35 shall create a written record of the observations leading to a controlled substances test. This record shall be written within twenty-four (24) hours or before the results of the test are released and shall be signed by the supervisor or M.S.A.D. #35 official making said observations.

E. Return-to-Duty Testing

Prior to returning to duty requiring the performance of safety-sensitive functions when a driver has engaged in conduct prohibited under this policy/procedure (if no termination of employment has occurred), the driver shall undergo a return-to-duty alcohol and/or controlled substances test(s) as appropriate.

Drivers found to have engaged in prohibited conduct under the alcohol provisions of this policy/procedure will not be permitted to return to duty unless the subsequent alcohol test reveals a result less than or consistent with federal and state standards. In cases involving controlled substances, a **verified negative** result is necessary before a driver may return to duty.

F. Follow-up Testing

In the event that a driver has been found to have been in violation of the prohibitions herein contained and is identified as requiring assistance in resolving problems associated with alcohol and/or controlled substances, M.S.A.D. #35 shall require the driver to submit to at least six (6) unannounced follow-up alcohol and/or controlled substances tests during the first twelve (12) months after returning to duty. Follow-up tests will be unannounced and may continue for up to sixty (60) months after returning to duty. Follow-up alcohol testing shall be conducted only when the driver is performing, just before, or just after ceasing to perform safety-sensitive functions.

VII. Refusal to Submit to Testing

All drivers who are required by federal regulations to submit to drug/alcohol testing must do so immediately upon being directed to submit to the test(s). A driver’s refusal to submit to testing will subject the driver to immediate removal from the performance of safety-sensitive functions. In addition, failure to comply with Federal regulations or this procedure is grounds for disciplinary action up to and including dismissal. Any of the following actions on the part of a driver constitutes a refusal to submit to a test:

A. Failure to provide adequate specimens/samples of substance(s) undergoing testing, including but not limited to breath and urine, without a valid medical reason;

B. Engaging in conduct which obstructs the testing process; and

C. Refusal by an employee to complete and sign testing forms.

VIII. Training for Supervisors

M.S.A.D. #35 will assign persons who will be designated to determine whether reasonable suspicion exists to require a driver to undergo testing under Part 382, with at least sixty (60) minutes of training on alcohol misuse and receive at least an additional sixty (60) minutes of training on controlled substances. Training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

IX. Enforcement

M.S.A.D. #35, in its independent authority as an employer, shall subject any driver who violates this policy/procedure or Federal regulations to potential disciplinary action up to and including dismissal, except to the extent that any state law requires otherwise.

In addition, any driver who refuses to submit to a post-accident, random, reasonable suspicion, return-to-duty or follow-up test(s) shall not perform or continue to perform safety-sensitive functions.

Furthermore, no driver tested and found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall perform or continue to perform safety-sensitive functions including driving a commercial motor vehicle until the start of the driver's next regularly scheduled duty period, but not less than twenty-four (24) hours after the test was administered.

X. Records

Employee drug and alcohol tests and results shall be maintained under strict confidentiality in a secure location with controlled access and released only in accordance with law. A driver, upon written request, shall receive copies of any records pertaining to his/her use of drugs or alcohol, including any records pertaining to his/her drug tests. Records shall be made available to subsequent employers or other identified persons only when expressly requested in writing by the driver.

XI. Notifications

Each driver shall receive educational materials prior to M.S.A.D. #35's commencement of alcohol and controlled substances testing. Such material will explain the requirements of the Code of Federal Regulations, Title 49 Part 382, and contain a copy of the Board's policy and administrative procedures for meeting these requirements. M.S.A.D. #35 shall also include a statement certifying that the driver has received the informational material and M.S.A.D. #35 will maintain an original signed copy of the statement on file.

In addition to the aforementioned items, M.S.A.D. #35 shall also make available to drivers information which shall identify:

A. The person designated by M.S.A.D. #35 to answer questions about the materials;

B. The procedures that will be used to test for the presence of alcohol and controlled substances; 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;

C. Information concerning the effects of alcohol and controlled substances on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substance problem (the driver's or co-worker's); and available methods of intervening when an alcohol or controlled substances problem is suspected, including confrontation, referral to any employee assistance program, and/or referral to management.

XII. Referral, Evaluation, and Treatment

A. Referral. A driver who has engaged in conduct prohibited by this policy/procedure shall be advised by M.S.A.D. #35 of resources available to the driver in evaluating and resolving problems associated with the misuse of alcohol and use of controlled substances. The information the bus driver receives will include: names, addresses, and telephone numbers of substance abuse professionals, counseling and treatment programs, in addition to information relating to his/her responsibility with regard to payment of such services.

B. Evaluation/Treatment. A driver who engages in such prohibited conduct shall be evaluated by a substance abuse professional who shall determine what assistance or treatment if any, the employee needs in resolving controlled substance(s) use.

XIII. Return To Duty

If M.S.A.D. #35 has not discharged a driver due to his/her engagement in prohibited conduct under this policy/procedure, the bus driver must, prior to returning to safety-sensitive duties:

A. Undergo return-to-duty testing and obtain an alcohol concentration level of less than 0.02 and/or a verified negative test for controlled substances;

B. Have been evaluated by a substance abuse professional; and

C. Have followed prescribed and/or recommended treatment.

XIV. Other Policies/Procedures

Nothing contained in this administrative procedure shall prevent the Board from establishing and enforcing independent policies and procedures relating to the possession, being under the influence of, distribution, sale or use of alcohol or controlled substances and any misconduct associated therewith and the penalties for violation of those policies/procedures, up to and including dismissal.

Legal References: 49 CFR Parts 40, 382, 390, 395

26 MRSA §§ 681(8)(B); 685(2); 689

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