

AR Code: 7241-R Drug and Alcohol Testing of Commercial Motor Vehicle Operators

Pursuant to policy 7241, Drug and Alcohol Testing of Commercial Motor Vehicle Operators, the Haywood County Schools will comply with applicable federal and state law and regulations requiring drug and alcohol testing of all school bus drivers and other commercial motor vehicle operators employed by the board.

The transportation director, in consultation with the superintendent or designee, shall serve as the school system's designated employer representative (DER) for purposes of communicating about any problems or issues that may arise during the testing process, taking immediate action(s) to remove school employees from safety-sensitive functions, and making required decisions in the testing and evaluation processes. The DER, also will receive test results and other communications related to the school system's drug and alcohol testing program under this regulation and 49 C.F.R. pt. 40. The school system's DER may be reached at 828-456-2421 to provide additional information and answer any questions about the school system's drug and alcohol testing program for school bus drivers and other commercial motor vehicle operators.

All drug and alcohol collection and testing procedures implemented pursuant to policy 7241 and this regulation as part of the school system's drug and alcohol testing program for school bus drivers and other commercial motor vehicle operators will comply with the requirements of 49 C.F.R. pt. 40, as applicable. Before performing a drug or alcohol test pursuant to board policy and this regulation, the driver will be notified that the test is required by federal regulations under 49 C.F.R. pt. 382.

The Commercial Driver's License Drug and Alcohol Clearinghouse (the "Clearinghouse") is an online database that gives employers and state and federal agencies real-time information about certain drug and alcohol violations committed by commercial driver's license and commercial learner's permit holders. See 49 C.F.R. Part 382, Subpart B. The purpose of the database is to make information about such violations easier to access and to avoid situations where drivers/applicants intentionally fail to disclose prior work history and prior testing history to a different employer. Haywood County Schools is required to register with the Commercial Driver's License Drug and Alcohol Clearinghouse and follow all recordkeeping requirements. Records of drug and alcohol program violations will remain in the Clearinghouse for five years, or until the driver has completed the return-to-duty process, whichever is later.

Commercial motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle

- (1) Has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds), whichever is greater; or
- (2) Has a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 or more pounds), whichever is greater; or
- (3) Is designed to transport 16 or more passengers, including the driver; or

- (4) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103(b)) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F)

For purposes of policy 7241 and this regulation, all school bus drivers and other commercial motor vehicle operators shall be required to report any therapeutic drug use to the transportation director or designee.

I. PRE-EMPLOYMENT INQUIRY AND TESTING

A. Pre-Employment Inquiry [See 49 C.F.R. 382.413, 49 C.F.R. 40.25. and 49 C.F.R. 382.701]

1. Haywood County Schools will conduct a pre-employment inquiry for any new applicant or current school employee seeking to begin performing safety-sensitive functions for the first time as required by 49 C.F.R. 382.413 and 49 C.F.R. 40.25, as applicable.
2. Haywood County Schools will attain general consent for limited electronic queries (annual or more frequent) of the Federal Motor Carrier Safety Administration (FMCSA) Drug and Alcohol Clearinghouse and manual inquiries with previous/other employers for any new applicant or current school employee who seeks to operate a commercial motor vehicle. This consent is in effect for the entire term of their employment.
3. As part of the pre-employment inquiry, Haywood County Schools will ask the applicant or employee whether he or she tested positive or refused to test on any pre-employment drug or alcohol test for a similarly regulated safety-sensitive position for which he or she applied, but did not obtain, during the past two (2) years.
4. The applicant or employee will not be permitted to perform safety-sensitive functions if:
 - a. he or she refuses to provide written consent to request drug and alcohol testing information from his or her previous employer(s); or refused to provide consent for the FMCSA
 - b. the information from his or her previous employer(s) is not obtained within thirty (30) days from the date on which he or she first performed safety-sensitive functions for the school system; or
 - c. he or she or a previous employer reports a positive test, a refusal to test, or another violation of a drug or alcohol regulation without the applicant's or employee's subsequent completion and

documentation of the return-to-duty process.

B. Pre-Employment Testing *[See 49 C.F.R. 382.301.]*

1. Pre-employment drug testing of an applicant or employee will be required after he or she has been conditionally offered the position performing safety-sensitive functions, but before he or she begins to perform safety-sensitive functions for the first time. No applicant or employee will be allowed to perform safety-sensitive functions unless and until the Human Resource department has received a verified negative drug test result for the applicant or employee. However, pursuant to 49 C.F.R. 382.301(a)-(c), exceptions to the pre-employment drug testing requirement may be made if, within the previous thirty (30) days, the applicant or employee has participated in a drug testing program that meets legal requirements and the transportation department has obtained the required information from such drug testing program(s).
2. Any applicant or employee who refuses to submit to pre-employment testing shall not be permitted to perform safety-sensitive functions.

II. TESTING DURING EMPLOYMENT

A. Post-Accident Testing *[See 49 C.F.R. 382.303.]*

1. Before a school bus driver or other commercial motor vehicle operator drives or otherwise operates a school bus or other commercial motor vehicle, the transportation department will provide the driver with necessary post-accident information, procedures, and instructions, so he or she will be able to comply with post-accident testing requirements.
2. In the event of an accident, drug and alcohol tests will be conducted on any surviving driver as soon as practicable after the accident if:
 - a. the driver was performing safety-sensitive functions and the accident involved the loss of human life, or
 - b. the driver receives a citation for a moving traffic violation under state or local law arising from the accident and the accident involved (i) bodily injury to any person who immediately received medical treatment away from the scene of the accident and/or (ii) disabling damage to one or more motor vehicles requiring the vehicle(s) to be towed or otherwise transported away from the scene of the accident. For purposes of this subsection, an alcohol test will be required only if the driver receives the citation within eight (8) hours after the

accident, and a drug test will be required only if the driver receives the citation within thirty-two (32) hours after the accident.

3. Any driver subject to post-accident testing shall remain readily available for testing, unless the driver needs to receive emergency medical care or otherwise obtain emergency assistance. In addition, any driver required to take a post-accident alcohol test shall not use alcohol for eight (8) hours following the accident, or until he or she undergoes a post-accident alcohol test, whichever occurs first.
4. School system officials will not attempt to conduct a required alcohol test after eight (8) hours following the accident and will not attempt to conduct a required drug test after thirty-two (32) hours following the accident. If a required alcohol test is not conducted within two (2) hours following the accident, or if a required drug test is not conducted within thirty-two (32) hours following the accident, the transportation director or designee will prepare and maintain a record stating the reason(s) the test was not promptly conducted.
5. The results of a breath or blood test for alcohol use and/or a urine test for drug use conducted by authorized federal, state, or local officials will fulfill post-accident testing requirements, provided the tests conform to applicable legal requirements and the results of the tests are obtained by the school system.
6. Any driver who refuses to submit to required post-accident drug and/or alcohol testing shall not be permitted to perform or otherwise continue to perform safety-sensitive functions and shall be subject to disciplinary action.

B. Random Testing *[See 49 C.F.R. 382.305.]*

1. Haywood County Schools will conduct unannounced random drug and alcohol testing of school bus drivers and other commercial motor vehicle operators on various dates throughout the year. A driver will only be randomly tested for alcohol use just before, during, or just after performing safety-sensitive functions.
2. The drivers selected for random drug and/or alcohol testing will be identified through a scientifically valid method, and each driver will have an equal chance of being tested each time selections are made. The total number of drivers randomly tested will meet or exceed the minimum annual percentage rates established under federal regulations (see 49 C.F.R. 382.305).
3. Any driver notified that he or she has been selected for random drug and/or

alcohol testing shall immediately proceed to the test site. If the driver is performing a safety-sensitive function, the driver shall stop performing that safety-sensitive function and proceed to the test site as soon as possible.

4. Any driver who refuses to submit to random drug and/or alcohol testing shall not be permitted to perform or otherwise continue to perform safety-sensitive functions and shall be subject to disciplinary action. *[See 49 C.F.R. 382.211.]*
5. In compliance with the United States Department of Transportation regulations, a driver who is absent on the day of drug/alcohol testing is required to be tested the day they return to work.

C. Reasonable Suspicion Testing *[See 49 C.F.R. 382.307.]*

1. A drug or alcohol test will be conducted when a trained supervisor or other trained school system official determines that reasonable suspicion exists that a school bus driver or other commercial motor vehicle operator has violated the prohibitions against drug and alcohol use under federal and state law and regulations and applicable board policy.
 - a. Reasonable suspicion resulting in the drug or alcohol testing of a driver must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver. The observations may include indications of the chronic and withdrawal effects of drug use.
 - b. The supervisor or other school system official making the required observations for drug and alcohol testing based on reasonable suspicion will be trained in accordance with 49 C.F.R. 382.603.
 - c. The supervisor or other school system official making the required observations shall prepare and sign a written record of his or her observations resulting in the drug or alcohol testing of a driver within twenty-four (24) hours of the observed behavior or before the results of the drug or alcohol tests are released, whichever is earlier.
2. Alcohol tests based on reasonable suspicion will be conducted only if the required observations are made just before, during, or just after the period of the workday that the driver is required to comply with the prohibitions against alcohol use. The supervisor or other school system official who determines that reasonable suspicion of alcohol use exists to test a driver will not conduct the alcohol test of that driver.
 - a. If an alcohol test is not conducted within two (2) hours following a determination of reasonable suspicion of alcohol use, the

transportation director or designee shall prepare and maintain a record stating the reasons the test was not promptly conducted.

- b. If an alcohol test is not conducted within eight (8) hours following a determination of reasonable suspicion of alcohol use, the transportation director or designee shall cease attempts to conduct an alcohol test and will include the reasons for not conducting the test in the required record.
 - c. In the absence of an alcohol test, school officials shall not take any action against a driver with respect to alcohol use based solely on the driver's behavior and appearance. However, the driver shall not report for or remain on duty to perform or continue to perform safety-sensitive functions until (i) an alcohol test is conducted and the driver's test result meets federal and state legal requirements or (ii) twenty-four (24) hours have elapsed following the determination of reasonable suspicion of alcohol use.
3. Any driver who refuses to submit to reasonable suspicion drug and/or alcohol testing shall not be permitted to perform or otherwise continue to perform safety-sensitive functions and may be subject to disciplinary action.

D. Return-to-Duty Testing *[See 49 C.F.R. 40.305.]*

1. The transportation director, in consultation with the superintendent or designee, may permit a school bus driver or other commercial motor vehicle operator who has violated the prohibitions against drug and/or alcohol use to resume performing safety-sensitive functions provided that the driver has successfully complied with the education and/or treatment prescribed by a qualified substance abuse professional.
2. Before the driver returns to duty and resumes performing safety-sensitive functions as permitted above, a return-to-duty drug and/or alcohol test will be conducted. If the driver's prohibited conduct involved drug use, the driver shall not return to duty until he or she has a negative drug test result. If the driver's prohibited conduct involved alcohol use, the driver shall not return to duty until his or her alcohol test result meets federal and state legal requirements.
3. Any driver who refuses to submit to required return-to-duty drug and/or alcohol testing shall not be permitted to perform or otherwise continue to perform safety-sensitive functions and shall be subject to disciplinary action.

E. Follow-Up Testing *[See 49 C.F.R. 40.307 and 40.309.]*

1. A school bus driver or other commercial motor vehicle operator who has violated the prohibitions against drug and/or alcohol use and who is subsequently evaluated by a substance abuse professional to determine what assistance is needed to address the driver's drug and/or alcohol problems may not continue to perform safety-sensitive functions unless the driver also complies with a follow-up testing plan established by the substance abuse professional after the driver has successfully complied with the substance abuse professional's recommendations for education and/or treatment.
2. Follow-up drug and/or alcohol testing will be conducted by the transportation department in accordance with the substance abuse professional's follow-up testing plan for the driver. Follow-up testing will be scheduled by the transportation department, but will be conducted unannounced and without advance notice to the driver.
3. The school system will not impose any additional testing requirements on the driver that go beyond the substance abuse professional's follow-up testing plan; however, the follow-up testing requirements may be modified by the substance abuse professional in accordance with federal regulations.
4. Any driver who refuses to submit to required follow-up drug and/or alcohol testing shall not be permitted to perform or otherwise continue to perform safety-sensitive functions and shall be subject to disciplinary action. [See 49 C.F.R. 382.211.]

F. The Commercial Driver's License Drug and Alcohol Clearinghouse [See 49 C.F.R. 982.701] is an online data base that gives employers and state and federal agencies real-time information about certain drug and alcohol violations committed by commercial driver's license and commercial learner's permit holders.

1. School officials shall conduct a limited query of the Clearinghouse at least once per year for each employee, pursuant to the employee's written or electronic consent, to determine whether information exists about the employee regarding violations of Part 382.
2. If information exists school officials shall obtain that information within 24 hours, subject to the employee's electronic consent submitted through the Clearinghouse.
3. If the employee's violation of Part 382 has been reported to the Clearinghouse, the employee may not resume safety-sensitive functions until a query of the Clearinghouse demonstrates that the employee completed the return to-duty process.

III. NOTICE AND RECORDKEEPING REQUIREMENTS

A. Information Provided to Drivers *[See 49 C.F.R. 382.601.]*

The transportation director or designee will provide each school bus driver and other commercial motor vehicle operator with educational materials that explain the drug and alcohol testing requirements under federal regulations and with the applicable board policies, administrative regulations, and other school system procedures related to the drug and alcohol testing program.

The information will be provided to drivers before performing safety-sensitive functions for the first time and will include a detailed discussion of at least the following:

1. the identity of the person designated by the school system to answer driver questions about the materials;
2. the categories of drivers who are subject to drug and alcohol testing;
3. sufficient information about the safety-sensitive functions performed by those drivers to make clear what period of the workday the driver is required to be in compliance;
4. specific information concerning driver conduct that is prohibited;
5. the circumstances under which a driver will be tested for drugs and/or alcohol, including post-accident testing;
6. the procedures that will be used to test for the presence of drugs and alcohol, 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, including post-accident testing information, procedures, and instructions;
7. the requirement that a driver submit to drug and alcohol tests;
8. An information sheet and a consent form to register for the **Commercial Driver's License Drug and Alcohol Clearinghouse**;
9. an explanation of what constitutes a refusal to submit to a drug or alcohol test and the attendant consequences;
10. the consequences under applicable federal and/or state law and regulations for drivers found to have violated the prohibitions against drug and alcohol use, including the requirement that the driver be immediately removed from safety-sensitive functions, the circumstances under which the driver be

prohibited from performing safety-sensitive functions for at least twenty-four (24) hours, and the procedures for evaluation, referral, and treatment in order to return to duty; and

11. information concerning (a) the effects of drug and alcohol use on an individual's health, work, and personal life; (b) signs and symptoms of a drug or alcohol problem, whether the driver's or a coworker's; and (c) available methods of intervening when a drug or alcohol problem is suspected, including confrontation, referral to an employee assistance program, and/or referral to management.

In addition, the information provided to drivers will include applicable board policies and administrative regulations regarding drug and alcohol use, including any disciplinary or other consequences, which are based on the school system's independent authority.

Each driver shall sign a statement certifying that he or she has received a copy of the materials described above. The transportation department will maintain the original signed certificate and may provide a copy of the signed certificate to the driver.

B. Notification of Drug and/or Alcohol Test Results

1. The transportation director or designee will notify a driver of the results of a pre-employment drug test if the driver requests the results within sixty (60) calendar days of being notified of the disposition of his or her employment application. *[See 49 C.F.R. 382.411.]*
2. The transportation director or designee will notify a driver of the results of random, reasonable suspicion, and post-accident drug tests if the test results are verified positive, including which drugs were verified as positive. *[See 49 C.F.R. 382.411.]*
3. The results of any alcohol test will be shared with a driver during the testing procedures required under 49 C.F.R. pt. 40, as applicable.

C. Maintenance and Release of Records *[See 49 C.F.R. 382.401 and 382.405. 49 C.F.R 382.701]*

1. Haywood County Schools will maintain all required records of the school system's drug and alcohol testing program for school bus drivers and other commercial motor vehicle operators in a secure location with controlled access pursuant to federal regulations under 49 C.F.R. 382.401 and 49 C.F.R. 40.333.
2. Drug and alcohol testing program records will be released as required by

law and in accordance with 49 C.F.R. 382.405.

- a. A driver may obtain copies of any records pertaining to his or her drug or alcohol use, including any records pertaining to his or her drug or alcohol tests, upon written request.
 - b. A driver's records will be made available to a subsequent employer or other identified person only as expressly requested and authorized in writing by the driver.
3. Employers are required to report drug and alcohol program citations and certain other information to the Clearinghouse. For example, Employers must report verified positive test results, refusals to submit to any DOT-mandated test, any alcohol or controlled-substance use that is prohibited by federal regulations, and information about a driver's follow-up and return to-duty-tests.

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