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## October 2016

This issue of the school transportation update is dedicated to information about drug and alcohol testing for school bus drivers.

There have been a lot of questions asked recently about drug and alcohol testing, the implications of medical marijuana and other facets of this required program for school bus drivers. An article on this topic will be included in the upcoming OSBA School Management News (SMN). This e-alert provides highlights of that article to benefit those administrators without access to SMN.

The U.S. Department of Transportation (DOT) is the federal office that governs drug and alcohol testing. The agency that oversees the testing for commercial motor vehicle (CMV) operators is the Federal Motor Carrier Administration (FMCSA). These regulations are documented in the Code of Federal Regulations Title 49-Transportation, specifically, Parts 40 and 382. Both sections are available on OSBA's online transportation reference library or on the FMCSA's website.

One key tenet of the DOT program is it cannot be modified or superseded by state or local laws, rendering it as the final authority on this program.

**Who is covered by the DOT drug and alcohol testing program?** School bus drivers are subject to the program because they operate commercial motor vehicles. School van drivers are not subject, because Ohio's school vans are limited to vehicles designed for less than nine passengers and below the threshold for DOT drug and alcohol testing.

**How does medical marijuana affect DOT drug and alcohol testing programs?** It does not affect the program. In [November 2015](#), the Office of the Secretary of DOT issued the following statement: "The Department of Transportation's Drug and Alcohol Testing Regulation - 49 CFR Part 40, at 40.151 (e) does not authorize 'medical marijuana' under a state law to be a valid medical explanation for a transportation employee's positive drug test result." The secretary's office also clarified that medical review officers will not be allowed to rule drug tests resulting from marijuana "negative" based upon information that a physician recommended use of the drug.

The net effect of these statements by DOT is that there are no operational changes to the requirements for our school bus drivers with regard to drug and alcohol testing.

**What tests are required under the DOT drug and alcohol testing program?** Employers are responsible for requiring pre-employment drug screen tests, random drug and alcohol tests, post-accident tests and reasonable suspicion tests. With the exception of reasonable suspicion

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tests, 40.11 of the federal code prohibits employers from “standing down” employees after any test before the medical review officer (MRO) has completed verification of the test.

**Pre-employment test:** Prior to the first time a driver performs safety sensitive functions for an employer, the driver shall undergo testing for controlled substances as a condition prior to being employed. The employer may not employ the applicant as a driver until they have received the test result from the MRO.

**Post-accident testing:** Employers are required to test for alcohol and controlled substances as soon as practicable after an accident. The conditions under which tests are required include any accident that involves a fatality, and accidents where the CMV driver was cited and there was either an injury or vehicles had to be towed because of disabling damage. DOT specifies time limits for both the alcohol and controlled substance tests after the accident.

A number of Ohio school districts have adopted policy that requires a driver to be tested after any accident. This policy exceeds the federal requirement and is allowable.

**Random testing:** Every employer is required to comply with the DOT random testing program by having drivers submit to drug and alcohol testing periodically throughout the year. DOT mandates the percentage of drivers that must submit to alcohol testing and a separate percentage of drivers that must submit to drug testing annually. Drivers must be selected at random and directed to immediately report for their test. The tests must be unannounced to drivers and spread reasonably throughout the calendar year.

**Reasonable suspicion testing:** Employers must require drivers to submit to alcohol or drug tests when the employer has reasonable suspicion to believe the driver has violated the prohibitions in DOT regulations for either substance. To require a driver to test, the employer's determination must be based upon "specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver." These observations must be made by a supervisor trained in accordance with DOT 382.603. (This training requires a minimum of two hours of education on the effects of alcohol and substance abuse, and the regulations that govern reasonable suspicion testing). For substance abuse, the federal regulations also allow testing based upon the observation of indications of chronic and withdrawal effects of controlled substances.

In practice, once an employee is directed to a reasonable suspicion test, the best practice is for the district to transport the individual to the testing facility. Also, districts are well served by having multiple supervisors trained in reasonable suspicion to allow for concurrence among supervisory staff.

**Refusal to test:** No employer shall permit a driver who refuses to submit to a drug and alcohol test to perform or continue to perform safety-sensitive functions. There are detailed regulations specified by DOT for various employee actions and results with regard to testing. Readers are encouraged to review the regulations and guidance published by DOT and available in the reference documents posted online, as listed above.

**Self reporting:** The federal guidelines establish a defined framework in which employees can admit to the use of alcohol and/or controlled substances. In this case, employees are protected from adverse action by the employer, but only if certain conditions are met. These guidelines are detailed in DOT 382.121 and should be closely reviewed by employers. They speak to required employer policies as well as the conditions when an employee is allowed to self report

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without sanction. In no case is an employee who self reports allowed to continue to operate a school bus.

Administrators looking for more information about DOT drug and alcohol testing programs should refer to the documents published by DOT and provided on OSBA's website, as noted above, or on the federal government's website. Districts also may direct questions to the MRO at the testing facility that provides their DOT testing.

Ohio School Boards Association  
8050 N High St, Suite 100  
Columbus, OH 43235

<http://www.ohioschoolboards.org>

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