

Guidance on Article 19-A Drug and Alcohol Testing of School Bus Drivers

The NYS DMV issued an advisory memo on January 7, 2019, summarizing a new NYS law, effective 12/22/2018, which requires pre-employment and random drug and alcohol testing of school bus drivers. A copy of the previous memo and the new law, is attached. This guidance document seeks to clarify the new requirements and provides answers to questions the NYS DMV has received from industry stakeholders since the release of the memo.

Q: The law pertains to all drivers of a school bus as defined by Section 142 of NYS Vehicle & Traffic Law. What is the definition of “school bus” in Section 142?

A: Section 142 of the Vehicle and Traffic Law defines a school bus as:

Every motor vehicle owned by a public or governmental agency or private school and operated for the transportation of pupils, children of pupils, teachers and other persons acting in a supervisory capacity, to or from school or school activities or privately owned and operated for compensation for the transportation of pupils, children of pupils, teachers and other persons acting in a supervisory capacity to or from school or school activities.

Q: The law requires motor carriers to conduct pre-employment and random drug and alcohol testing on all school bus drivers. We already conduct testing on our drivers who require testing under federal regulations. Must we set up a new pool for drivers who do not meet the federal requirement for testing?

A: Yes. Federal Motor Carrier Safety Association (FMCSA) regulations prohibit Non-USDOT covered employees from being included in the random pool of USDOT covered employees. Therefore, should a carrier employ both types of drivers, the carrier must maintain two separate random testing pools: one which includes USDOT covered employees only, one which includes Non-USDOT covered employees only.

- ❖ USDOT covered employees – School bus drivers required by part 383 of USDOT- FMCSA regulations to obtain a CDL
- ❖ Non-USDOT covered employees – School bus drivers who do not require a CDL under federal standards, but do require a CDL under Article 19-A of NYS Vehicle & Traffic Law
 - Drivers in this Non-USDOT category are comprised of those who operate a school bus with a GVWR of 26,000 pounds or less and hold a CDL with a Passenger (P) endorsement and are restricted to carrying 15 or fewer passengers including the driver:
 - N1 restriction-No Vehicle Designed for 15 or More Passengers
 - N2 restriction-No Vehicle Designed for 8 or More Passengers

Q: Must pre-employment testing be conducted before adding a driver to the 19-A roster?

A: Yes. Pre-employment testing must be conducted before adding a driver to the 19-A roster. Carriers must maintain a copy of test results in the 19-A driver file for all drivers (USDOT covered and Non-USDOT covered).

Q: Do “volunteer” drivers require testing under this law?

A: No. Per NYS Vehicle & Traffic Law Section 509-a (2), a bus driver shall not include a volunteer who drives a bus for less than thirty days a year. DMV Commissioner’s Regulation 6.2(t) further defines a volunteer school bus driver as one who occasionally transports passengers to and from extracurricular activities sponsored by a school or religious organization fewer than 30 days per calendar year and where such driving is unpaid and incidental to any terms or contract of hire.

Volunteer drivers who are not required to be in 19-A are not subject to drug and alcohol testing under this law.

FMCSA Regulations

Drug and alcohol testing required under NYS Vehicle & Traffic Law Section 509-g must be conducted in conformance with FMCSA regulation-Part 382 of Title 49 of the Code of Federal Regulations-Controlled Substances and Alcohol Use and Testing.

Please visit the FMCSA website for detailed information and guidance on all aspects of testing including employer responsibilities, handling of test results, record retention, and the return-to-duty process.

<https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&ty=HTML&h=L&mc=true&=PART&n=pt49.5.382>

Questions?

Answers to additional questions may be found in FMCSA Guidance:

<https://www.fmcsa.dot.gov/regulations/title49/section/382.305?guidance>

and Drug and Alcohol FAQs:

<https://www.fmcsa.dot.gov/regulations/drug-alcohol-testing/drug-and-alcohol-faqs>

You may also direct questions to the NYS DMV Bus Driver Unit at BusDriverUnit@dmv.ny.gov