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TO: Members of the State Board of Education

FROM: Karen B. Salmon, Ph.D.

DATE: August 22, 2017

SUBJECT: COMAR 13A.06.07.01-.10 (AMEND)
Student Transportation
PERMISSION TO PUBLISH

PURPOSE:

The purpose of this action is to request permission to publish proposed amendments to COMAR 13A.06.07.01-.10, *Student Transportation*.

REGULATION PROMULGATION PROCESS:

Under Maryland law, a state agency, such as the State Board, may propose a new or amended regulation whenever the circumstances arise to do so. After the State Board votes to propose such a regulation, the proposed regulation is sent to the Administrative, Executive and Legislative Review (AELR) Committee for a 15-day review period.

If the AELR Committee does not hold up the proposed regulation for further review, it is published in the Maryland Register for a 30-day public comment period. At the end of the comment period, the Maryland State Department of Education (MSDE) staff reviews and summarizes the public comments. Thereafter, MSDE staff will present a recommendation to the State Board of Education to either: (1) adopt the regulation in the form it was proposed; or (2) revise the regulation and adopt it as final because the suggested revision is not a substantive change; or (3) revise the regulation and re-propose it because the suggested revision is a substantive change.

At any time during this process, the AELR Committee may stop the promulgation process and hold a hearing. Thereafter, it may recommend to the Governor that the regulation not be adopted as a final regulation or the AELR Committee may release the regulation for final adoption.

BACKGROUND/HISTORICAL PERSPECTIVE:

On April 11, 2017, the National Transportation Safety Board (NTSB) released its Safety Recommendation Report in response to a collision between a Baltimore City school bus and a Maryland Transportation Authority transit bus that occurred in Baltimore City on November 1, 2016. The NTSB identified two areas of concern for the MSDE. Specifically, terms in COMAR 13A.06.07.01-.10 that were not defined and clarification to when a local school system is required to submit a school vehicle driver or trainee, during pre-employment screening, to the MSDE for inclusion in the disqualified driver database.

In order to respond to these findings, the MSDE worked with the Office of the Attorney General to provide advice regarding the findings. Additionally, the local Directors of Pupil Transportation were informed of the findings and a task force of directors was convened.

On May 25, 2017, the task force met to review the NTSB report and provided input related to proposed changes to COMAR 13A.06.07.01-.10. The task force recommendations supported all changes listed by the NTSB and the MSDE, with one exception. The inclusion of “assault in the second degree”, as a disqualifying condition, was opposed by the task force. Feedback centered on the fact that the addition of “assault in the second degree” would be stricter than current regulations for teachers. The task force expressed concern that the addition of this requirement would significantly impact the ability for local school systems to staff their needed routes, because many local school systems already experience driver shortages. In addition, the inclusion of “assault in the second degree”, if adopted, could potentially cause local school systems to be required to disqualify drivers who have already passed background checks and are currently driving for local school systems.

Local Directors of Pupil Transportation, as well as the School Bus Contractor’s Association, have received drafts of the proposed regulations to allow for open comment.

SUMMARY:

Recommended modifications to the regulation include:

- amending definitions to “School Vehicle Driver” and “School Vehicle Driver Trainee” to capture individuals “or an entity contracting with a local school system” seeking Department required certification as a school vehicle driver at a local school system;
- defining the terms “Insubordination”, “Misfeasance”, “Property Damage”, and “Unsafe Actions,” to be listed under COMAR 13A.06.07.01, Definitions;
- removing the option of completing only one of the required actions to be a school vehicle driver under COMAR 13A.06.07.06(B)(1) by making all actions mandatory;
- adding the term “Trainee” to the title of .07 School Vehicle Driver *and Trainee* Disqualifying Conditions and Termination. This addition would also include the term “trainee” following any reference to “school vehicle driver” under .06 and .07 by replacing terms such as “individual,” “employee,” or “applicant” with the term “school vehicle driver and/or trainee” to allow for consistency throughout COMAR 13A.06.07.06-.10.;

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- referencing “a crime of violence” Criminal Law Article §14-101 to allow for consistency throughout COMAR 13A.06.07;
- proposing that “assault in the second degree” be included and referenced to Criminal Law Article §3-203; and,
- requiring local school systems to disqualify a school vehicle driver or trainee if the school vehicle driver or trainee has been convicted of a crime or if charges are pending that would meet the disqualification standards found under COMAR 13A.06.07.07(C)(1).

ACTION:

The MSDE requests permission to publish proposed amendments to COMAR 13A.06.07.01-.10, *Student Transportation*.

Title 13A STATE BOARD OF EDUCATION

Subtitle 06 SUPPORTING PROGRAMS

Chapter 07 Student Transportation

Authority: Education Article, §§2-205, 5-205, and 8-410, Annotated Code of Maryland

.01 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) Accident.

(a) "Accident" means an occurrence or action involving a driver of a school vehicle operated by or under contract to a local school system, which results in an injury or fatality to an individual or damage to a motor vehicle or property, except as otherwise provided in 49 CFR §382.303, which is incorporated by reference, for the purpose of post-accident testing for alcohol and controlled substances.

(b) "Accident" does not include an occurrence or action involving a driver of a vehicle not registered as a school vehicle or a school charter vehicle.

(2) "Adulterated specimen" means a specimen that contains a substance that:

(a) Is not expected to be present in human urine; or

(b) Is expected to be present in human urine but is at a concentration so high that it is not consistent with human urine.

(3) "Appreciable damage" means property damage in excess of \$3,000.

(4) "Appropriate medical examination" has the meaning stated in COMAR 11.19.05.01.

(5) "Assistant supervisor of transportation" means an individual with high level management responsibilities who reports directly to the supervisor of transportation.

(6) "Behind-the-wheel instruction" means time spent driving a school vehicle during preservice or in-service instruction.

(7) "Commercial motor coach" means a bus that:

(a) Is at least 26,000 pounds gross vehicle weight;

(b) Has a minimum of three axles;

(c) Carries a minimum of 16 passengers, including the driver; and

(d) May be equipped with a restroom.

(8) "Department" means the Maryland State Department of Education.

(9) "External observation" means a school bus driver observation conducted from another vehicle while the school bus driver is on an established route.

(10) "Incapacitating injury" means an injury, other than fatal, that prevents the injured individual from walking, driving, or normally continuing the activities that the individual was capable of performing before the accident.

(11) "Insubordination" means violating a lawful order or failing to obey a lawful order given by a superior.

[(11)] (12) "Loading zone" has the meaning stated in Transportation Article, §22-228(f)(1), Annotated Code of Maryland.

[(12)] (13) "Medical review officer" means a doctor of medicine or osteopathy who:

(a) Is responsible for receiving laboratory results generated by this Program;

(b) Has knowledge of substance abuse disorders;

(c) Has appropriate training to interpret and evaluate a donor's confirmed laboratory positive or "unsuitable" drug test results, together with the donor's medical history and any other relevant biomedical information; and

(d) Is required to have a working knowledge of the U.S. Department of Transportation Federal Motor Carrier Safety Administration regulations applicable to the employer for which drug test results are evaluated.

(14) "Misfeasance" means performing a proper act in a wrongful or injurious manner or the improper performance of an act which might have been lawfully done.

[(13)] (15) "Nonpublic school" means nursery school, elementary school, and secondary school as stated in COMAR 13A.09.10.02B.

[(14)] (16) Off-Highway Loading Zone.

(a) "Off-highway loading zone" has the meaning stated in Transportation Article, §22-228(f)(2)(ii), Annotated Code of Maryland.

(b) "Off-highway loading zone" includes a parking lot and school grounds.

[(15)] (17) "On-highway loading zone" means a stop made completely off the travel portion of the roadway on a shoulder that is at least 8 1/2 feet wide.

[(16)] (18) "On-roadway stopping" means a stop made on the travel portion of the highway, not to include the shoulder.

[(17)] (19) "Personal injury" means an injury treated by a physician, dentist, or nurse, or in a hospital.

[(18)] (20) "Preventable accident" means an accident in which the driver failed to do everything the driver reasonably could have done to prevent it, according to accepted standards of the National Safety Council.

[(21)] (21) "Property Damage" means injury to real or personal property. The amount of property damage is established by evidence of replacement values and cost of repairs.

[(19)] (21) "Safety-sensitive function" has the meaning stated in 49 CFR §382.107, which is incorporated by reference.

[(20)] (22) "School charter vehicle" has the meaning stated in Transportation Article, §13- 420(c), Annotated Code of Maryland.

[(21)] (23) "School vehicle" has the meaning stated in transportation Article, §11-154, Annotated Code of Maryland.

[(22)] (24) "School vehicle attendant" means an individual who:

(a) Has applied for employment with a local school system or an entity contracting with a local school system as a school vehicle attendant;

(b) Is employed by a **local** school system or an entity contracting with a local school system as a school vehicle attendant; and

(c) Is certified and verified by the local school system as having met all local and state requirements to be a school vehicle attendant.

[(23)] (25) "School vehicle driver" means an individual who:

(a) Has applied for employment with a local school system **or an entity contracting with a school system** as a school vehicle driver;

(b) Is employed by a school system or an entity contracting with a school system as a school vehicle driver; or

(c) Is an owner-operator of a school vehicle; and

(d) Is certified and verified by the local school system as having met all local, state, and federal requirements to be a school vehicle driver.

[(24)] (26) "School vehicle driver trainee" means an individual who has applied for employment with a local school system **or an entity contracting with a school system** and is seeking Department-required certification as a school vehicle driver.

[(25)] (27) "Seat belt" has the meaning stated in Transportation Article, §22-412, Annotated Code of Maryland.

[(26)] (28) "Shy bladder" means a donor is unable to provide a sufficient quantity of urine for a drug test.

[(27)] (29) "Student with a disability" has the meaning stated in COMAR 13A.05.01.03B.

[(28)] (30) "Substance abuse professional" means a person who meets the credentials, basic knowledge, qualifications, and training requirements in 49 CFR Part 40; Subpart O §40.281 to:

(a) Evaluate individuals who have violated a U.S. Department of Transportation controlled substance or alcohol regulation; and

(b) Make recommendations concerning education, treatment, follow-up testing, and aftercare.

[(29)] (31) "Substituted specimen" means a specimen that is not consistent with human urine that has been submitted by the individual being tested for a controlled substance in place of the individual's own urine.

[(30)] (32) "Supervisor of transportation" means the individual designated to be responsible for the administration of the student transportation program in a local school system, or a designee.

[(31)] (33) "Type I school vehicle" has the meaning stated in Transportation Article, §11-173, Annotated Code of Maryland.

[(32)] (34) "Type II school vehicle" has the meaning stated in Transportation Article, §11-174, Annotated Code of Maryland.

[(35)] "Unsafe Actions" is defined in COMAR 13A.06.07.08(C)

[(33)] (36) "U.S. Department of Transportation" means an agency or operating administration of the U.S. Department of Transportation administering regulations requiring alcohol testing, drug testing, or both.

.06 School Vehicle Driver Trainee and School Vehicle Driver Qualifications.

A. School Vehicle Driver Trainee Qualifications. Before a school vehicle driver trainee transports a student in a school vehicle the trainee shall:

(1) Meet all licensing requirements of the Motor Vehicle Administration, including commercial driver's license requirements with appropriate endorsements;

(2) Have not more than two current points on the individual's driving record and a satisfactory past driving record as determined by the supervisor of transportation;

(3) Complete the preservice instruction required under Regulation .09A of this chapter;

(4) Have no evidence of a criminal history which would be a disqualifying condition under Regulation .07C of this chapter or an action under Regulation .07D of this chapter, either of which in the opinion of the supervisor of transportation makes the individual unfit for employment;

(5) Be 21 years old or older;

(6) Satisfactorily pass the appropriate medical examinations for school vehicle drivers under COMAR 11.19.05.01; and

(7) Receive a negative controlled substances test result required under Regulation .10 of this chapter.

B. School Vehicle Driver Qualifications. A school vehicle driver shall:

(1) Do **[one of]** the following:

(a) Meet the requirements in §A of this regulation; **[or]** and

- (b) Complete the in-service instruction required under Regulation .09B of this chapter;
 - (2) Demonstrate the capacity to make appropriate decisions, especially in emergency situations; and
 - (3) Properly wear a seat belt when the school vehicle is in operation.
- C. School Vehicle Driver Evaluations.
- (1) A qualified school vehicle driver instructor certified under Regulation .05 of this chapter, a supervisor of transportation, or an assistant supervisor of transportation shall evaluate each driver at least once every 2 years.
 - (2) For regular school vehicle drivers, the evaluator shall:
 - (a) Ride with the school vehicle driver on a regularly scheduled route to or from school; or
 - (b) Conduct an external observation, if an external observation is approved by the supervisor of transportation.
 - (3) For substitute school vehicle drivers, an evaluator may conduct an evaluation over a sample route for a minimum of 30 minutes and incorporate all the elements of a regular school vehicle driver evaluation, except for student and driver interaction.

.07 School Vehicle Driver and Trainee Disqualifying Conditions and Termination.

A. A school vehicle driver *or trainee* who does not meet the qualifications of the evaluation under Regulation .06(C) of this chapter may be disqualified from driving a school vehicle at the discretion of the supervisor of transportation, unless the supervisor of transportation determines that retraining, instruction, or both, are satisfactorily completed.

B. Disqualification for Driving Record.

- (1) Except as set forth in §B(2) of this regulation, a school vehicle driver *or trainee* shall be disqualified from driving a school vehicle if the driving record shows three current points.
- (2) If a school vehicle driver has three current points while employed as a school vehicle driver and the supervisor of transportation wishes to retain the individual as a school vehicle driver, the supervisor of transportation shall place a letter in the driver's individual personnel file listing sufficient reasons for continued qualification of the driver as a school vehicle driver.
- (3) If a school vehicle driver *or trainee* has more than three current points, the driver may not operate a school vehicle.

C. Disqualification for Criminal Conduct.

- (1) A local school system **[may not permit] shall disqualify a[n] [individual to] school vehicle driver or trainee from operat[e]ing** a school vehicle if the individual:
 - (a) Has been convicted of a crime or if criminal charges are pending against the individual for a crime involving:
 - (i) Child abuse or neglect;
 - (ii) Contributing to the delinquency of a minor;
 - (iii) Moral turpitude, if the offense bears directly on the individual's fitness to transport minors;
 - (iv) An alcohol or controlled substances offense defined in federal or State law, unless the supervisor of transportation determines and reports the determination in writing, to the Department's Office of Student Transportation, that the permanent disqualification should not apply because mitigating circumstances exist;
 - (v) A crime of violence *as set forth in Criminal Law Article §14-101*;
 - (vi) *Assault in the second degree as set forth in Criminal Law Article §3-203*;
 - [(vi)]** (vii) Any action that may endanger the safety of students being transported;
 - [(vii)]** (viii) Driving a school vehicle or school charter vehicle while under the influence of a controlled substance, or while impaired or under the influence of alcohol; or
 - [(viii)]** (ix) Driving a vehicle other than a school vehicle or school charter vehicle while under the influence of a controlled substance, or while impaired or under the influence of alcohol; or
 - (b) Has evidence of a criminal history that, in the opinion of the supervisor of transportation, makes the individual unfit for employment.

(2) A[n] **[individual] school vehicle driver or trainee** who plead[s]ed guilty or nolo contendere with respect to, is placed on probation before judgment with respect to, or is convicted of an offense listed in §C(1)(a)(i)—**[(vii)]** (viii) of this regulation is permanently disqualified from operating a school vehicle in Maryland, except as provided in §C(1)(a)(iv) of this regulation.

(3) A[n] **[individual] school vehicle driver or trainee** who pleads guilty or nolo contendere with respect to, is placed on probation before judgment with respect to, or is convicted of an offense listed in §C(1)(a)**[(viii)]** (ix) of this regulation is disqualified from operating a school vehicle for a minimum of 10 years from the date of the action.

(4) A[n] **[individual] school vehicle driver or trainee** who engages in conduct prohibited under Regulation .10B(2) of this chapter is disqualified from operating a school vehicle in Maryland, except as provided under Regulation .10D of this chapter.

D. Disqualification for Unsafe Actions. Misfeasance, incompetence, insubordination, or any act of omission that adversely affects transportation or safety may be grounds for disqualification and termination of a *school vehicle driver or trainee* by the supervisor of transportation.

E. Disqualification for Accidents.

- (1) The school vehicle driver *or trainee* shall report to the supervisor of transportation a school vehicle accident involving personal injury or property damage as soon as practicable after the accident.
- (2) A school vehicle driver or trainee who fails to report an accident as soon as practicable following the accident is disqualified from operating a school vehicle. The duration of the disqualification is at the discretion of the supervisor of transportation.
- (3) An accident involving an incapacitating or fatal injury, or appreciable damage shall be reviewed by the local transportation staff.

- (4) A driver who has a preventable accident involving personal injury or appreciable damage shall:
 - (a) Have a conference with the supervisor of transportation; and
 - (b) Attend appropriate classroom instruction if directed to do so by the supervisor of transportation.
- (5) A **school vehicle driver or trainee** who has had two preventable accidents involving personal injury or appreciable damage in a 24-month period may not operate a school vehicle in any local school system for a period of 5 years from the date of the last accident, unless the supervisor of transportation places a letter in the driver's personnel file documenting sufficient reasons to retain the individual as a qualified school vehicle driver.
- (6) A **school vehicle driver or trainee** who has more than two preventable accidents involving personal injury or appreciable damage in any 24-month period is permanently disqualified from operating a school vehicle in Maryland.

F. Disqualified Driver Database.

- (1) The Department's Office of Pupil Transportation shall maintain a confidential computer database of **school vehicle driver's or trainee's** who have been disqualified by a local school system under §§B—E of this regulation or for any other reason.
- (2) The supervisor of transportation shall notify the Department's Office of Pupil Transportation of a **school vehicle driver's or trainee's** disqualification within 30 days of the **school vehicle driver's or trainee's** receipt of notification of the disqualification.
- (3) The notification to the Department's Office of Pupil Transportation shall be in the format prescribed by the Department.
- (4) Upon receipt of the current list of active school vehicle drivers, the Department's Office of Pupil Transportation shall match that list with the Department's confidential computer database established under this regulation and immediately notify the supervisor of transportation if an active **school vehicle driver or trainee** is listed on the Department's computer database.

.08 School Vehicle Attendant Qualifications and Disqualifications.

A. A school vehicle attendant shall:

- (1) Complete the preservice instruction under Regulation .09D(1) of this chapter;
- (2) Be in good health, mature, able to discharge the duties of the position, and able to command the respect of others;
- (3) Be able to exercise sound judgment to make appropriate decisions in emergency situations; and
- (4) Complete the prescribed in-service instruction every 12 months under Regulation .09D(2) of this chapter.

B. Disqualifications for Criminal Conduct.

- (1) An individual may not serve as a school vehicle attendant if the individual has been convicted of a criminal charge or if a criminal charge is pending for a crime involving:
 - (a) Child abuse or neglect;
 - (b) Contributing to the delinquency of a minor;
 - (c) Moral turpitude, if the offense bears directly on the individual's fitness to assist minors;
 - (d) A crime of violence **as set forth in Criminal Law Article §14-101;**
 - (e) **Assault in the second degree as set forth in Criminal Law Article §3-203;**
 - [(e)] (f) Any conduct that may endanger the safety of students being transported.
- (2) An individual who pleads guilty or nolo contendere with respect to, is placed on probation before judgment with respect to, or is convicted of a crime under §B(1) of this regulation, is permanently disqualified from serving as a school vehicle attendant.
- (3) An individual who pleads guilty or nolo contendere with respect to, is placed on probation before judgment with respect to, or is convicted of a controlled substance offense as defined in federal or State law is disqualified from serving as a school vehicle attendant for a period of 10 years from the date of the action.

C. Disqualification for Unsafe Actions. Misfeasance, incompetence, insubordination, or any act or omission that adversely affects transportation or safety may be grounds for disqualification and termination **of the school vehicle attendant** by the supervisor of transportation.

D. Disqualified Attendant Database.

- (1) The Department's Office of Pupil Transportation shall maintain a confidential computer database of attendants **or trainee's** who have been disqualified by a local school system under §§B and C of this regulation or for any other reason.
- (2) The supervisor of transportation shall notify the Department's Office of Pupil Transportation of an attendant's **or trainee's** disqualification within 30 days of the attendant's **or trainee's** receipt of notification of the disqualification.
- (3) The notification shall be in the format prescribed by the Department.
- (4) Upon receipt of the current list of active attendants, the Department's Office of Pupil Transportation shall match that list with the Department's confidential computer database established under this regulation and immediately notify the supervisor of transportation if an active attendant is listed on the Department's computer database.

.09 Instructional Content Requirements.

A. Preservice Instruction for School Vehicle Drivers.

- (1) A trainee shall satisfactorily complete a minimum of 8 hours of classroom instruction in the core units of the school bus driver instructional program developed by the Department, including:
 - (a) First aid;
 - (b) Railroad grade crossing safety; and

- (c) Bridge crossing safety.
- (2) All or a portion of the classroom instruction required under §A(1) of this regulation may be waived by the supervisor of transportation if the trainee is currently certified by a local school system.
- (3) A trainee shall receive a minimum of 9 hours behind-the-wheel instruction, except if the trainee is:
 - (a) A current holder of a commercial driver's license with a passenger and school bus endorsement for 3 years, and has received a minimum of 3 hours of behind-the-wheel instruction; or
 - (b) Currently certified as a school vehicle driver by a local school system, and has received a minimum of 3 hours of behind-the-wheel instruction.
- (4) Class size shall be conducive to individualized instruction.
- B. In-Service Instruction for School Vehicle Drivers.
 - (1) At least 6 hours of in-service instruction shall be provided annually.
 - (2) Five hours shall have an emphasis on safety procedures, strategies, and laws.
 - (3) In-service instruction topics:
 - (a) Shall be selected from the core or advanced units of the school vehicle driver instruction program developed by the Department; and
 - (b) May include other topics contained in the National Safety Council's Defensive Driving Course, controlled substances and alcohol regulations, or personnel and student safety issues.
 - (4) One hour of the 6 hours of in-service instruction may be on-the-bus observation, instruction, or both.
 - (5) In-service instruction in the following topics shall be given at least once every 3 years:
 - (a) First aid; and
 - (b) Bridge and railroad grade crossing.
 - (6) Class size shall be limited to 35 students except as provided in §B(7) of this regulation. If the number of students exceeds 35, the session does not meet the State instructional requirements.
 - (7) A maximum of two large-group safety meetings of more than 35 students, not to exceed 2 hours each, may be provided each year.
 - (8) At least 2 of the 6 hours per year of in-service instruction shall be conducted in classes of not more than 35 students.
- C. School Vehicle Driver Recertification.
 - (1) A school vehicle driver who has been deleted from a school system's driver roster for 1 year or less may be recertified as a school vehicle driver if the individual satisfactorily completes refresher training that includes a minimum of 3 hours of classroom instruction and 3 hours of behind-the-wheel instruction, unless the supervisor of transportation determines less refresher training is necessary.
 - (2) An explanation to support the decision to require less than the minimum refresher training shall be placed in the school vehicle driver's personnel file.
 - (3) If a school vehicle driver has been deleted from the school system's driver roster for more than 1 year, the school vehicle driver shall complete all school vehicle trainee qualifications as required under Regulation .06A of this chapter.
- D. School Vehicle Attendant Instruction.
 - (1) Preservice Instruction. Before riding in the capacity of a school vehicle attendant on a school vehicle with students on board, a school vehicle attendant shall complete a minimum of 4 hours of preservice instruction that includes:
 - (a) 1 hour of instruction in first aid; and
 - (b) 1 hour of instruction appropriate to the duties of the school vehicle attendant.
 - (2) In-Service Instruction. A school vehicle attendant annually shall complete 2 hours of in-service instruction in topics that include equipment, student management, and first aid.
- E. Instructional Records. A local school system shall maintain attendance records, electronic or printed format, of all preservice and in-service instructional sessions which include the following information, as appropriate:
 - (1) Name of the trainee, driver, or attendant;
 - (2) Name of the instructor;
 - (3) Dates of instruction;
 - (4) Number of hours of classroom instruction and topics of instruction; and
 - (5) Number of hours of behind-the-wheel instruction.

.10 Alcohol and Controlled Substances Use and Testing.

A. Testing Program Required.

- (1) A local school system shall implement an alcohol and controlled substances testing program for all school vehicle drivers, or shall certify to the Department that all school vehicle drivers are participating in an alcohol and controlled substances testing program.
- (2) The testing program shall meet the standards established in 49 CFR 40 and 382, which are incorporated by reference by this chapter and by applicable Maryland law, except that the alcohol concentration limit for disqualification is 0.02 or greater.
- (3) A controlled substances test shall be administered as part of the application process and prior to the offer of employment as a school vehicle driver trainee.

(4) An alcohol or controlled substances test shall be administered as soon as practicable if a supervisor of transportation, who has received training in identifying the signs and symptoms of controlled substances and alcohol abuse or use, has determined there is reasonable suspicion that a school vehicle driver *or trainee* is using alcohol or a controlled substance.

(5) Both a controlled substances and alcohol test, as defined in 49 CFR Parts 40 and 382, shall be performed following a school vehicle accident.

B. Disqualification of *School Vehicle Drivers and Trainees*.

(1) A school vehicle driver *or trainee* who engages in conduct prohibited by §B(2) of this regulation is permanently disqualified from operating a school vehicle in Maryland except under §D of this regulation.

(2) Prohibited conduct is:

- (a) Having an alcohol concentration test result of 0.02 or greater on a test required under this regulation;
- (b) Possessing alcohol while on duty;
- (c) Using alcohol while performing safety-sensitive functions;
- (d) Using alcohol within 4 hours before or after performing safety-sensitive functions;
- (e) Using alcohol within 8 hours following an accident requiring a post-accident alcohol test under 49 CFR §382.303, or until the driver undergoes the post-accident alcohol test, whichever occurs first;
- (f) Refusal to submit to a controlled substances test required under this regulation;
- (g) Refusal to submit to an alcohol test under this regulation;
- (h) While on duty, using controlled substances legally prescribed by a licensed physician, unless the use is according to the instructions of the prescribing physician who has advised the *school vehicle driver or trainee* that the substance does not adversely affect the *school vehicle driver's or trainee's* ability to safely operate a school vehicle; or
- (i) Testing positive for alcohol, controlled substances, or both on a test required under this regulation or by federal regulations.

(3) A[n] **[employee or an applicant for employment]** *school vehicle driver or trainee* is determined as having refused to take a controlled substances test under §B(2)(f) of this regulation if the **[employee or an applicant for employment]** *school vehicle driver or trainee*:

- (a) After being directed to report for testing, fails to appear for any test, except a pre-employment test *as set forth in .10(B)(5)*, within a reasonable time, as determined by the employer or supervisor, and consistent with regulations;
- (b) If an owner-operator or self-employed *school vehicle driver*, fails to appear for a test when notified to do so by an employer or supervisor;
- (c) Fails to remain at the testing site until the testing process is completed;
- (d) Fails to provide a urine specimen for any controlled substances test required by 49 CFR Part 40, U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, Procedures for Transportation Workplace Drug and Alcohol Testing Programs, or State or local regulations;
- (e) Fails to permit the observation or monitoring of urine specimen collection under 49 CFR §§40.67(1) and 40.69(g);
- (f) Fails to provide a sufficient amount of urine when directed and when it has been determined through a required medical evaluation that there was no adequate medical explanation for the failure to do so;
- (g) Fails or declines to take a second test as directed by the employer, supervisor of transportation, or collector;
- (h) Fails to undergo a medical examination or evaluation within 5 business days, as directed by the medical review officer as part of the verification process, or as directed by the employer or supervisor as part of the "shy bladder" procedures, but in the case of a pre-employment controlled substances test, the applicant is considered to have refused to test without a medical evaluation or examination only if the pre-employment test is conducted following a contingent offer of employment;
- (i) Fails to cooperate with any part of the testing process, including refusing to empty pockets when directed by the collector, or behaving in a confrontational way that disrupts the collection process, and in the case of a pre-employment test, including when the testing process actually commences; or
- (j) When the medical review officer reports to the employer or supervisor that the donor has a verified adulterated or substituted specimen result.

(4) A[n] **[applicant]** *school vehicle driver or trainee* reporting for a pre-employment controlled substances test is not considered to have refused a test under this chapter if:

- (a) The **[applicant]** *school vehicle driver or trainee* leaves the testing site before the testing process actually commences; or
- (b) The **[applicant]** *school vehicle driver or trainee* does not leave a urine specimen because the individual left the testing site before the testing actually commences.

(5) A[n] **[employee or an applicant for employment]** *school vehicle driver or trainee* is determined as having refused to take an alcohol test if the **[employee]** *school vehicle driver or trainee*:

- (a) Fails to appear for a test, except a pre-employment test *as set forth in .10(B)(7)*, within a reasonable time as determined by the employer or supervisor and consistent with regulations, after being directed to report for a test;
- (b) In the case of a[n] **[employee]** *school vehicle driver or trainee* who is an owner-operator or self-employed **[individual]** *school vehicle driver or trainee*, fails to appear for a test when notified to do so by an employer or supervisor;
- (c) Fails to attempt or to provide an adequate amount of saliva or breath for any alcohol test required by Part 40, U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, Procedures for Transportation Workplace Drug and Alcohol Testing Programs, State or local regulations;

(d) Fails to provide a sufficient breath specimen and the physician has determined through a required medical evaluation that there was no adequate medical explanation for the failure;

(e) Fails to undergo a medical examination or evaluation by a licensed medical physician within 5 business days, as directed by the employer or supervisor as part of the insufficient breath procedures;

(f) Fails to sign the U. S. Department of Transportation certification at Step 2 of the alcohol test form; or

(g) Fails to cooperate with any part of the testing process.

(6) A[n] [applicant] *school vehicle driver or trainee* reporting for a pre-employment test who does not provide a saliva or breath specimen under §B(2)(g) of this regulation because the applicant left the testing site before the testing commences, is not considered to have refused to test.

C. Reporting Disqualified Drivers.

(1) The supervisor of transportation shall notify the Department's Office of Pupil Transportation within 3 business days of receipt of positive controlled substances or alcohol test results.

(2) The notification shall be in the format prescribed by the Department and include the date the test was administered and the date of disqualification.

(3) The Office of Pupil Transportation of the Department shall maintain a confidential computer database of the *disqualified school vehicle driver's, trainee's, or attendant's* information reported by the local school systems under §C(1) of this regulation.

(4) On the first day of each month, the supervisor of transportation shall submit to the Department's Office of Pupil Transportation a current list of active school vehicle drivers. The list shall be in an electronic format prescribed by the Department.

(5) Upon receipt of the current list of active school vehicle drivers, the Department's Office of Pupil Transportation shall match that list with the Department's confidential computer database established under this regulation and immediately notify the supervisor of transportation if an active *school vehicle driver, trainee, or attendant* is listed on the Department's computer database.

D. Return to Service of Disqualified Drivers.

(1) An individual who has been disqualified from driving a school vehicle in Maryland under §B of this regulation may not be considered for service as a school vehicle driver in any local school system unless the individual submits to the local supervisor of transportation a statement signed by a substance abuse professional certifying under oath that the individual has:

(a) Been determined, by the substance abuse professional, to be a recovering alcoholic or drug addict;

(b) Successfully participated in a controlled substances or alcohol abuse treatment program of at least 6 months duration prescribed by the substance abuse professional, and has not tested positive for alcohol or controlled substances, as applicable, at any time during the rehabilitation program; and

(c) Been free of alcohol or controlled substances for at least 10 years, including the 6-month period when the individual participated in a rehabilitation program.

(2) An individual who has been disqualified from driving a school vehicle in Maryland under §B of this regulation shall pass a return-to-duty test as required by 49 CFR §382.309, before returning to service as a school vehicle driver.

(3) An individual who has been placed in service as a school vehicle driver in accordance with the procedures described in §D(1) and (2) of this regulation shall be subject to follow-up testing for up to 60 months.

(4) A supervisor of transportation may disapprove a substance abuse professional's certificate under §D(1) of this regulation if the supervisor of transportation determines that the controlled substances or alcohol abuse rehabilitation program was not certified by the State Department of Health and Mental Hygiene.

E. Local Authority. A local school system may establish additional policies with respect to the use or possession of alcohol or controlled substances, including any consequences for a school vehicle driver found to have a specified alcohol or controlled substance level, that are based on the local school system's authority independent of this regulation and are otherwise consistent with applicable law.

F. Access to Records.

(1) A local school system shall have immediately available all results, including documentation, of alcohol and controlled substances tests conducted under its alcohol and controlled substances use and testing program. Confidentiality of records shall be established by local school system policy.

(2) The Department shall identify the specific records to be maintained by the school system.

(3) A school system shall have electronic access to the computer database maintained by the Department under §C(3) of this regulation.

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State Superintendent of Schools