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TO: Members of the State Board of Education
FROM: Karen B. Salmon, Ph.D. *KBS/CLW*
DATE: October 25, 2016
SUBJECT: COMAR 13A.06.07.01-.10 *Student Transportation* (AMEND)
RETURN FOR PERMISSION TO PUBLISH

PURPOSE:

This item is to request permission to publish proposed amendments to the Code of Maryland Regulations (COMAR) 13A.06.07.01-.10, Student Transportation. See Attachment 1 for a highlighted version of the proposed amendments.

The request was presented to the State Board of Education in August 2016. The Board had a question on the school vehicle attendant qualifications provision (13A.06.07.08B(3)). This item includes new information at the top of Page 3 that addresses the Board's question.

BACKGROUND/HISTORICAL PERSPECTIVE:

Under Maryland law, a state agency, such as the State Board of Education, may propose a new 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 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.

Student Transportation Regulations: As part of the periodic review of Student Transportation regulations, the MSDE Office of Pupil Transportation has conferred with local school system transportation directors about possible revisions that are needed. Discussions have occurred at the bi-

annual meetings of the local transportation directors that are convened by the MSDE Office of Pupil Transportation. The proposed changes were agreed upon by the majority of the transportation directors. The proposed changes have been shared with the local school system superintendents and no comments were received from them. No changes have been made to this Chapter of COMAR since 2007.

EXECUTIVE SUMMARY:

Definitions: Appreciable Damage, 13A.06.07.01B(3)

Appreciable damage to a vehicle currently is defined as damage in excess of \$1,500. The proposed change increases the damage threshold to \$3,000. From 2008 to 2014, the Consumer Price Index categories related to motor vehicles increased an average of 2.49 percent each year (for urban consumers in the categories of motor vehicle parts and equipment, vehicle parts and equipment other than tires, motor vehicle body work, and motor vehicle repair). This brings the appreciable damage threshold adjusted for inflation to about \$1,800 in Fiscal 2016. Given that the Student Transportation regulations are not frequently revised, and that a small impact to a vehicle can easily generate significant repair costs, it is recommended that the appreciable damage threshold is increased to \$3,000.

Definitions: School Vehicle Attendant, 13A.06.07.01B(new 22)

A definition for school vehicle attendant is added to the regulations. The definition for school vehicle attendant is consistent with the definition for a school vehicle driver in that it includes someone who has applied for employment in the position, is currently employed by a school system or school system contractor, and is certified as having met all requirements for the position.

Definitions: School Vehicle Driver, 13A.06.07.01B(22/new23)

A provision is added to the regulations for the definition of school vehicle driver. The new provision states that a school vehicle driver means an individual who is certified and verified by the local school system as having met all local, state, and federal requirements to be a school vehicle driver.

Definitions: School Vehicle Driver Trainee, 13A.06.07.01B(23/new 24)

The definition of school vehicle driver trainee is revised to indicate that it includes individuals who have applied for employment as a vehicle driver with contractors for local school systems.

School Vehicle Attendant Qualifications and Disqualifications, 13A.06.07.08B(3)

Under current regulations, an individual who incurs an alcohol or controlled substance offense is disqualified from serving as a school vehicle attendant for 10 years from the date of the offense. The proposed change would allow those with alcohol offenses, but not controlled substance offenses, to serve as school vehicle attendants. Prior to 2007, alcohol offenses were not a disqualifying event and some local school systems allowed school vehicle drivers who incurred an alcohol offense to move into the role of school vehicle attendant.

New Information on This Provision: MSDE staff polled local school transportation directors in September 2016 to clarify whether they support or oppose the change to allow those with alcohol offenses to serve as vehicle attendants. All but one of the directors said that they support the proposed

change. The 23 who support the change indicated that attendants are not in the same safety-sensitive category as vehicle drivers. Therefore, attendants should be held to the same code of conduct standards as non-driver employees. The directors indicated that they believe the school systems should retain control over non-driver codes of conduct. The one director who did not agree with the proposed change said that attendants should be held to the same higher standard as drivers because they have a safety-sensitive role.

Instructional Content Requirements for School Vehicle Drivers, 13A.06.07.09A(1)

The number of pre-service training hours required for school vehicle drivers is proposed to increase from 6 hours to 8 hours. Among the 24 local school systems, only 3 (Kent, Queen Anne, and Somerset) do not currently require 8 hours or more of pre-service training for school vehicle drivers. Based on a survey of local jurisdictions, the state average is 15 hours of pre-service training for school vehicle driver trainees. A minimum of 8 hours of pre-service training is consistent with best practices in Maryland to ensure that topics such as bullying, harassment and blood-borne pathogens are included.

Instructional Content Requirements for School Vehicle Driver Recertification, 13A.06.07.09C(3)

Under current regulations, school vehicle drivers who have been deleted from the school system's driver roster for more than 1 year must complete pre-service training requirements in order to be re-certified. The proposed change would specify that drivers who want to be re-certified also have to meet the other qualifications required for new drivers, such as meeting driver licensing requirements and having a satisfactory driving record, among others.

Instructional Content Requirements for School Vehicle Attendants, 13A.06.07.09D(1)

The number of pre-service training hours required for school vehicle attendants is proposed to increase from 2 hours to 4 hours. Among the 24 local school systems, only 4 (Caroline, Garrett, Somerset, and Worcester) currently require 2 hours of pre-service training for school vehicle attendant trainees. Based on a survey of all 24 jurisdictions, the state average is 10 hours of pre-service training for school vehicle attendants. A minimum of 4 hours of pre-service training is consistent with best practices in Maryland.

Alcohol and Controlled Substances Use and Testing: Reporting Disqualified Drivers, 13A.06.07.10C(1)

Local transportation supervisors are required to report any positive drug or alcohol test results to the MSDE Pupil Transportation Office within 3 days. The proposed change would specify that the results have to be reported within 3 business days.

ACTION:

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

Pupil Transportation Regs / COMAR 13A.06.07.08B(s) Proposed Change

School System	Agree	Disagree	Comments of Local Transportation Directors
Allegany	✓	✓	Our drivers and attendants are held to a higher standard than school staff personnel due to safety-sensitive jobs they perform. The safety of students is the main priority; anything that endangers safety must be eliminated. No second chances with life of child. I feel it should remain as it reads.
AA County	✓		Concurs with Washington County's response.
Balto. City	✓		Attendants and drivers would be sent for drug test and disqualified based on results. It would not have anything to do with pleading guilty for alcohol. MVA would address a DUI and disqualify.
Baltimore Co.	✓		Agrees in principle, i.e., an attendant should have the same status of any non-driving employee within the school structure. COMAR covers us all.
Calvert	✓		There should be no connection between a DUI and a person's certification/qualification when the certification/qualification does not involve driving a vehicle.
Caroline	✓		We believe each county should be able to determine the employment status of the individual as outlined in regulations. It also allows us to redirect the employee to serve as an assistant and our HR Department agrees.
Carroll	✓		An alcohol offense should not preclude someone from serving as a bus assistant. All other school system employees would not be terminated for a first offense of this nature. Repeat violators should be subject to progressive discipline in accordance with EAP programs, employee bargaining agreements, and contractual language as they may exist.
Cecil	✓		You may choose to keep them as an attendant and it allows them to keep working.
Charles	✓		Proposed change would align more appropriately with the regulations that are already in place that apply to others in school positions whose responsibilities do not require the operation of vehicles.
Dorchester	✓		This change gives the Transportation Director the option to keep a driver that has an alcohol charge as an attendant on a bus.
Frederick	✓		We believe each county should be able to determine the employment status of the individual as outlined in regulation.
Garrett	✓		Supports because bus attendants do not drive school vehicles; therefore, an alcohol offense should have no bearing on an individual's ability to be qualified as a bus attendant.
Harford	✓		Agrees with Washington Co. and believes that in this type of situation there should be progressive discipline. Repeat offenders should be considered for decertification based on their inability to use good judgment after due process. Any alcohol offense related to the job should be a considered as a more severe matter with more severe consequences.
Howard	✓		Echoes many of the comments by colleagues. Since bus attendants do not drive the bus and/are not classified under US DOT regulations as a 'safety-sensitive' job, this standard should not be applied as a condition of their certification. This position is also consistent with our discipline policy for other employees.
Kent	✓		It is my opinion that another position involving a less safety-sensitive function would be a great option for workers to be given a second chance; mistakes happen. Unemployment lines are enormous enough already.
Montgomery	✓		Proposing back to pre-2007 regs. Occasionally we've had a good/decent bus operator who had been around for a while and then mess up by driving their own vehicle after having a bit too much to drink; they get caught. I do not want them driving my buses for a good long while, if ever, but I sometimes want to help them save their school system career by demoting them to a bus attendant if I think they would make a good attendant. Currently, I'm prohibited from doing so. Any other school system personnel such as teacher, building service worker, school nurse, principal or superintendent could stay in their regular job. I think it is fair that they not be excluded from bus attendant.
PG County	✓		Attendants are still in a safety-sensitive position even if they are not BTW and, unlike teachers and school staff, are required to evacuate students on the road during emergency situations. They do not have the benefit of other building staff members on a school bus and must use good judgment without suspicion of impaired judgment. I have always been hesitant about excluding attendants from the consequences of drug and alcohol convictions. However, disqualifying for a 10 year period is extreme. Allowing them to show proof of successful completion of rehabilitation program within the year of conviction would be preferred to total

Queen Anne's	✓	disqualification for 10 years. Better left as a local decision. Based on this, I agree with removing the 10 year disqualification. Spoke to boss and are in favor of the proposed changes of dropping alcohol from the regulation. We feel that this should be a local decision.
St. Mary's	✓	For all other school system personnel that do not transport students, they typically do not lose employment/certification for a first offense involving an alcohol issue that occurred on their personal time. All school systems hold a higher standard if staff members including a school vehicle attendant were under the influence of alcohol or controlled substances while on duty working with students. Pre-2007 COMAR did not include language regarding alcohol. In the opinion of some that participated in previous reviews of the regs, that language was not added. It is believed that this language may have been added in error.
Somerset	✓	I would echo everyone's previous sentiments that an alcohol violation should not necessarily prevent a bus aide from fulfilling their duties; however, if it was a repeated violation, we should follow our counties policies for employee assistance program and discipline procedures.
Talbot	✓	Agrees with the change under the same reasoning that the other counties have stated.
Washington	✓	An individual could make a mistake or have an unlucky day after having a glass of wine with dinner and someone hits them on the way home. I believe that the circumstances of an alcohol charge would be investigated by all supervisors and directors in order to determine if there is a bigger problem and a one-time unlucky event. Since we can all make decisions beyond COMAR, this change would at least give us the option to keep a really good but unlucky individual employed.
Wicomico	✓	Believe that this decision should be left at the local level in accordance with each school district's code of conduct. Due to the nature of the bus attendant's position, s/he would not be operating a school bus, but would be assisting in the management of students. They would always be under the watchful eye of the school bus driver.
Worcester	✓	This proposed change enables transportation supervisors to use their experience and good judgment regarding the future of an individual.

09/16/2016

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 **[\$1,500]** \$3000

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

(12) "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.

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

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

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

(18) "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.

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

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

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

(22) "School Vehicle Attendant" means and 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 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.

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

(a) Has applied for employment with a local 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.

[(23)] (24) "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.

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

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

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

[(27)] (28) "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.

[(28)] (29) "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.

[(29)] (30) "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.

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

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

[(32)] (33) "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.

.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; or

(e) 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 an alcohol or 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 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 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 disqualification within 30 days of the attendant'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 **[6] 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 **[preservice instruction as required under Regulation .09A] 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 **[2] 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 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 Drivers.

(1) A school vehicle driver 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 driver that the substance does not adversely affect the driver'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) An employee or an applicant for employment is determined as having refused to take a controlled substances test under §B(2)(f) of this regulation if the employee or applicant for employment:

- (a) After being directed to report for testing, fails to appear for any test, except a pre-employment test, within a reasonable time, as determined by the employer or supervisor, and consistent with regulations;
- (b) If an owner-operator or self-employed, 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) An applicant reporting for a pre-employment controlled substances test is not considered to have refused a test under this chapter if:

- (a) The applicant leaves the testing site before the testing process actually commences; or
- (b) The applicant does not leave a urine specimen because the individual left the testing site before the testing actually commences.

(5) An employee or an applicant for employment is determined as having refused to take an alcohol test if the employee:

- (a) Fails to appear for a test, except a pre-employment test, 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 an employee who is an owner-operator or self-employed individual, 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) An applicant 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 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 driver 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.