

The following Frequently Asked Questions (FAQ) are technical assistance intended to help local education agencies (LEA) transportation directors understand some of the requirements for drug and alcohol testing, as well as some key strategies to meet those requirements. Federal and state regulations may include additional requirements. Transportation directors should consult with their LEA legal counsel regarding specific situations.

The information contained in this document relates to those that serve as School Vehicle Drivers, School Vehicle Driver Trainees, Bus Attendants, and Alternative School Vehicle Drivers as well as any other position identified within this document.

Lastly, it is important to know that The United States Congress recognized the need for a drug and alcohol-free transportation industry, and in 1991 passed the Omnibus Transportation Employee Testing Act, requiring Department of Transportation (DOT) agencies to implement drug and alcohol testing of safety-sensitive transportation employees. These regulations identify who is subject to testing, when they are tested, and in what situations. The Federal Motor Carrier Safety Administration (FMCSA) controlled substances and alcohol use and testing regulations can be found at 49 CFR Part 382.

## 1. D&A Test for Post Accident (DOT vs non-DOT)

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**ANSWER:** A DOT drug test is used by FMCSA-regulated employers to test for the following drugs/metabolites:

- Marijuana metabolites
- Cocaine metabolites
- Amphetamines including methamphetamine, MDMA
- Opioids – codeine, heroin (6-AM), morphine, oxycodone, oxymorphone, hydrocodone, hydromorphone
- Phencyclidine (PCP)

Violations of DOT drug and alcohol testing rules will result in an individual's removal from safety-sensitive functions and will require that the individual be evaluated and complete a Substance Abuse Professional's (SAP) program. Additionally, the individual can be permitted follow-up testing and a possible return to duty.

A non-DOT drug test includes those drugs/metabolites tested under a DOT drug test but can be expanded to look for the presence of barbiturates, methadone, quaaludes, benzodiazepines, and propoxyphene among other things.

D&A testing is mandatory under federal DOT regulations under certain circumstances. Under 49 CFR part § 382.303 post-accident testing, A DOT drug and alcohol test is required if the driver was performing safety-sensitive functions with respect to the vehicle and:

1. The accident involved the loss of human life in any vehicle or pedestrian;
2. Receives a citation within 8 hours (for an alcohol test) or 32 hours (for a drug test) of the occurrence AND an individual receives medical treatment away from the scene of the accident; or

3. Receives a citation within 8 hours (for an alcohol test) or 32 hours (for a drug test) of the occurrence AND a vehicle receives disabling damage and is required to be transported away from the scene by a tow truck or other motor vehicle.

If a driver is involved in an accident that does not involve a fatality or does not receive a citation, a DOT Post Accident Drug test should **not** be given.

A non-DOT controlled substances and alcohol test should be performed on any driver that is involved in an accident that involves either appreciable damage and/or personal injury but if a refusal or positive result is obtained, the individual **would not** be included in the FMCSA Clearinghouse. The non-DOT D&A test must be consistent with the Maryland alcohol and controlled substances use and testing regulation COMAR 13A.06.07.11.

If a driver refuses or has a positive for a non-DOT Drug test, for an accident that involves either appreciable damage and/or personal injury, they shall be disqualified from operating a school bus. LEAs that disqualify a driver for a non-DOT Post Accident Drug test, shall do so by selecting "Drug and Alcohol Disqualification" under the Maryland State Department of Education (MSDE) Office of Pupil Transportation (OPT) Disqualification Database.

Additionally, if a non-DOT test is provided and then a citation is given to the driver, a DOT drug test must still be done within 32 hours of the accident, and the alcohol test within 8 hours of the accident. If a DOT drug/alcohol test cannot be obtained within the time frame the LEA and/or the employer shall document and maintain a record on file identifying the reason that testing was not completed within the required 8 or 32 hours.

## 2. Pre-employment drug test (DOT vs non-DOT)

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**ANSWER:** Under COMAR 13A.06.07.11A(3), Alcohol and Controlled Substances Use and Testing, "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."

Depending on the license or permit status of the individual a DOT or non-DOT Drug/Alcohol test would be conducted.

- If the individual does not yet have a Commercial Learners Permit (CLP) or a Commercial Driver's License (CDL), a non-DOT controlled substances test, consistent with COMAR 13A.06.07.11, shall be administered.
- If the individual does have a Commercial Learners Permit (CLP) or a Commercial Driver's License (CDL) a 5-panel DOT drug test shall be administered.

Additionally, the COMAR regulation also covers those that contract services with an LEA. If a contractor identifies a candidate for training as a school vehicle driver to an LEA, a drug test shall be administered as soon as possible.

### 3. When must a school vehicle driver be added to an LEA's drug testing pool?

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**ANSWER:** Drivers and Driver Trainees must be incorporated into a random testing program/pool as required by 49 C.F.R. §§40 and 382 as soon as possible after his or her hire and within 30 days of completing a pre-employment drug test, before conducting safety sensitive functions such as the transportation of students. This involves both LEAs and contractors.

If a driver is removed from a random testing pool for more than 30 days, or if 30 days pass following a DOT drug test and the individual has not been added to a random testing pool, the driver must again be pre-employment tested.

It is important to note that random testing for DOT regulations is based upon an individual's job function, not their job title. Only individuals who perform safety-sensitive functions – such as the driving of commercial motor vehicles – may be included in a DOT random testing pool.

### 4. When is the earliest that an individual can be required to be added to the MSDE D&A Database?

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**ANSWER:** As set forth in COMAR 13A.06.07.01B(30) and .07, a school vehicle driver trainee may be added to the MSDE D&A Disqualified Database.

"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.

If an individual applies, begins training, or provides information to an LEA indicating their intention to become a school vehicle driver, they would be identified as a school vehicle driver trainee. After this point if any information is obtained, or event occurs that would be grounds for disqualification, the individual's name shall be submitted to the MSDE Disqualified Database.

### 5. How to request removal of a driver or any other individual from the MSDE database that was added to the FMCSA Clearinghouse?

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**ANSWER:** For drivers that were added to the FMCSA Clearinghouse under 49 CFR 382.701, the process to remove a driver from the MSDE Database is as follows:

1. Verify that the individual has been added and is currently in the FMCSA Clearinghouse.
2. Verify that the individual is listed on the FMCSA Clearinghouse as “non-Prohibited Status”.
3. Prepare a letter on your LEA letterhead explaining your request to remove the driver from the MSDE Disqualified Database as well as details supporting why they should be removed. Proof that the individual is listed on the FMCSA Clearinghouse as “non-Prohibited Status” must be included in the request.
4. The letter and supporting documentation shall be sent to the MSDE Office of Pupil Transportation (OPT) for review.
5. The OPT will respond to the request within 3 business days with either verification of the removal of the individual from the MSDE Disqualified Database or a request for more information.

## 6. How to request removal of a driver or any other individual from the MSDE database who was never added to the FMCSA Clearinghouse?

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**ANSWER:** For drivers that were not added to the FMCSA Clearinghouse, the process to remove a driver from the MSDE Database is as follows:

1. Verify that the individual is not listed on the FMCSA Clearinghouse under any status.
2. Prepare a letter on LEA letterhead explaining the request to remove the driver from the MSDE Disqualified Database as well as details supporting why they should be removed. Information should be included stating that the individual is not listed on the FMCSA Clearinghouse due to their date of disqualification.
3. Verification that the individual completed their SAP recommendations should be included in the letter.
4. The letter and any supporting documentation shall be sent to the OPT for review.
5. The OPT will respond to the request within 3 business days with either verification of the removal of the individual from the MSDE Disqualified Database or a request for more information.

## 7. Can a School Vehicle Attendant be added to a random drug testing pool?

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**ANSWER:** Yes, as long as the testing pool is kept separate from the CDL drug testing pool under 49 C.F.R. §385.305.

## 8. What if a School Vehicle Attendant refuses or has a positive drug or alcohol test?

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**ANSWER:** COMAR 13A.06.07.08 is silent on drug or alcohol testing for school vehicle attendants. The ability to drug or alcohol test attendants is left to the discretion of LEAs. Local boards of education may have policies regarding drug or alcohol testing of their employees who work with children. The testing of attendants can be on an individual basis or they can be included in a random drug testing pool (that would need to be separate from the DOT testing program). If an attendant refuses or has a positive drug or alcohol test it is the LEAs decision on the next appropriate action consistent with local board policies. Please note that a positive drug or alcohol test (or refusal) by an attendant is not an automatic disqualifying condition under COMAR 13A.06.07.08.

LEAs are authorized to submit an attendant to the MSDE Disqualified Database but should do so by selecting “Unsafe Actions” and putting in the comment section information regarding the drug/alcohol test and results for other LEAs to review.

## 9. What if an Alternative School Vehicle Driver refuses or has a positive drug or alcohol test?

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**ANSWER:** COMAR 13A.06.07.09 requires that an Alternative School Vehicle Driver (ASVD) shall “Receive a negative controlled substance test result;” prior to employment. COMAR is silent on random or other drug or alcohol testing for ASVDs. The ability to drug test ASVDs is left to the discretion of the LEAs consistent with local board of education policy. The testing of ASVDs can be on an individual basis or included in a random drug testing pool (that would need to be separate from the DOT pool). If an ASVD refuses or has a positive drug or alcohol test, it is the LEAs decision on the next appropriate action. Please note that a positive drug or alcohol test or refusal result by an ASVD is not an automatic disqualifying condition.

LEAs are authorized to submit an ASVD to the MSDE Disqualified Database but should do so by selecting “Unsafe Actions” and putting in the comment section information regarding the drug/alcohol test and results.

## 10. Do contractors need to provide positive and negative drug test results to LEAs?

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**ANSWER:** Yes. Under COMAR 13A.06.07.11A(1), Alcohol and Controlled Substances Use and Testing, “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.”

LEAs must ensure that all drivers are meeting the requirements of 49 CFR 40 and 382 as well as COMAR 13.06.07.11. To meet this requirement, LEAs should be able to receive information pertaining to all drug/alcohol tests for all certified school vehicle drivers within their LEA. Negative test results can be provided to the LEA either immediately, monthly, quarterly, or any other scheduled time agreed by the LEA and the school vehicle contractor.

## 11. How long is a driver disqualified if they have a positive or refusal?

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**ANSWER:** A driver is immediately and permanently disqualified from operating a school vehicle if they refuse or have a positive drug/alcohol test. The driver shall be removed from all safety sensitive functions and given information on qualified Substance Abuse Professionals (SAPs) who are available in their area if they desire to potentially be rehired within the state and/or have their name removed from the MSDE Disqualified Database by an LEA.

Once a driver has been evaluated by an SAP and completed any education and/or treatment recommendations, otherwise known as Return-to-Duty (RTD) requirements, the driver may be eligible to resume safety sensitive functions following verification of non-prohibited status on the FMCSA Clearinghouse and removal from the MSDE Disqualified Database. See COMAR 13A.06.07.11D.

Local boards of education may set their own policies related to any period of decertification for school vehicle drivers regardless if a driver completed the RTD requirements, their non-prohibited status on the FMCSA Clearinghouse, and/or their status on the MSDE Disqualified Database.

## 12. Can School Vehicle Drivers serve as Alternative School Vehicle Drivers if they have been disqualified for a positive/refusal drug/alcohol test?

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**ANSWER:** No. School vehicle drivers cannot be reassigned to serve as an ASVD if they have been disqualified as a school vehicle driver for a positive/refusal drug/alcohol test.

### 13. Can School Vehicle Drivers serve as School Vehicle Attendants if they have been disqualified for a positive/refusal drug/alcohol test?

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**ANSWER:** Yes. School vehicle drivers can be reassigned to serve as a school vehicle attendant if they have been disqualified as a bus driver for a positive/refusal drug/alcohol test. An LEA can choose to retain the individual, or the individual can seek and potentially obtain employment with another LEA, without the individual being removed from the MSDE Disqualified Database. The individual would be prohibited from becoming a school vehicle driver until they have completed the RTD process and was identified as non-prohibited on the FMCS Clearinghouse and/or removed from the MSDE Disqualified Database.

Please note that these individuals' names will generate every month on the MSDE Monthly Matched Report as disqualified and information will need to be sent to MSDE regarding their status as populated monthly.