



Mohammed Choudhury
State Superintendent of Schools

TO: Members of the State Board of Education
FROM: Mohammed Choudhury, State Superintendent of Schools
DATE: June 27, 2023
SUBJECT: COMAR 13A.06.07.06-.19
Student Transportation
Permission to Adopt

Purpose

The purpose of this action is to request permission to adopt proposed amendments to the Code of Maryland Regulations (COMAR) 13A.06.07.06-.19, 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 be recommended 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

Student transportation regulations have been established to ensure the safety of children when traveling from home to school and school to home. These regulations are established based on legislation, federal law, and best practices as outlined in the National Congress on School Transportation (NCST). In 2020, the Federal Motor Carrier Safety Administration (FMCSA) enacted the federal Drug and Alcohol Clearinghouse that requires FMCSA-regulated employers, medical review officers (MROs), substance abuse professionals (SAPs), consortia/third party administrators (C/TPAs), and other service agents to report information related to

violations of the drug and alcohol regulations in 49 Code of Federal Regulations, Parts 40 and 382 by current and prospective employees. The Clearinghouse is a secure online database that gives employers, the FMCSA, State Driver Licensing Agencies, and State law enforcement personnel real-time information about CDL and commercial learner's permit (CLP) holders' drug and alcohol program violations.

The Federal Clearinghouse requires the following of all LEAs:

- LEAs must query the Clearinghouse (or ensure that contractors are querying the Clearinghouse) for current and prospective employees' drug and alcohol violations before permitting those employees to operate a commercial motor vehicle on public roads.
- LEAs or school bus contractors must annually query the Clearinghouse for each driver they currently employ.

The Clearinghouse contains records of violations of drug and alcohol prohibitions under 49 CFR Part 382, Subpart B, including positive drug and alcohol test results, as well as test refusals. When a driver completes the return-to-duty (RTD) process and the follow-up testing plan, the results are recorded in the Clearinghouse. Records of drug and alcohol program violations will remain in the Clearinghouse for five years, or until the driver has completed the return-to-duty process, whichever is later. Additionally, all violations for any U.S. Department of Transportation (DOT) drug or alcohol test will also be added to the MSDE Disqualified Database for School Vehicle Drivers.

As 13A.06.07.11, Alcohol and Controlled Substance Use and Testing, uses standards established in 49 CFR 40 and 382. These regulations are incorporated by reference and are the basis for all DOT drug and alcohol testing as well as the requirement to remove the employee from performing safety-sensitive functions. All LEAs must follow these standards except that the alcohol concentration limit for disqualification in the MSDE Disqualified Database is 0.02 or greater whereas the FMCSA Clearinghouse is 0.04 or greater.

In February of 2022, Maryland student transportation regulations were revised to meet the requirements of HB 72 County Boards of Education – Student Transportation – Vehicles and Report. Following that revision, the Office of Pupil Transportation (OPT) became aware of a section of student transportation regulations (13A.06.07.11, Alcohol and Controlled Substance Use and Testing) that mandate certain treatment requirements. These requirements were inconsistent with federal law as it relates to the “return to duty” process for CDL drivers that had a drug or alcohol violation.

To correct this inconsistency, the MSDE Office of Pupil Transportation convened an advisory committee made up of the Maryland Association of Pupil Transportation (MAPT), local transportation directors from across the state and two members from LEA Human Resources. The Advisory Committee was tasked with providing recommendations to MSDE for CDL driver return-to-duty standards that would be incorporated into COMAR

13A.06.07, Student Transportation. The advisory committee met virtually five times and provided the recommendations for COMAR Student Transportation revisions.

Executive Summary

The State Board granted permission to publish at the January 24, 2023, State Board meeting. The amendments to COMAR 13A.06.07.06-.19 were published in the Maryland Register from April 21 to May 22, 2023.

The published amendments to the regulation include:

- Remove the requirement that a substance abuse professional (SAP) must identify a driver as an alcoholic or drug addict. Since the decision to classify an individual as an addict or abuser is solely up to an SAP, this section is not necessary.
- Remove the requirement that an individual must attend six months of treatment. Since this requirement is a medical decision of the SAP, and education may be required in place of treatment, this determination should be made by the SAP.
- Remove the length of time that a driver must be free of alcohol or controlled substances since there is no process to ensure or track this requirement by either the SAP, the Local Education Agency (LEA), or MSDE. When the period of 10 years was reviewed, there was no data to support that it had an impact on the safety of students nor did it have any direct relation to the treatment of addiction.
- Under Federal Regulation 49 CFR Part 382, the return-to-duty process is clear on the SAP referral, follow through on treatment/ education recommendations, and increased drug and alcohol testing. With 49 CFR Part 382 federal regulations combined with the federal drug and alcohol clearinghouse, the recommended revisions permit individuals previously disqualified for drug and alcohol offenses to be eligible for consideration for possible employment.
- Correct cross-reference numbers throughout the regulations that did not correspond with the most recently revised regulation changes. This was due to the addition of COMAR 13A.06.07.09, Alternative School Vehicle Driver Qualifications and Disqualifications back in 2022. These revisions will now align the correct cross reference number to the regulations and correct this issue.

During the open comment period, the MSDE received comments from St. Mary's Public School, Anne Arundel County Public Schools, Calvert County Public Schools, and White Glove Drug & Alcohol Testing, Inc. These comments were not in support of the proposed changes. A summary of the comments along with a copy of each submission is attached.

Following a legal review of the comments received during the open comment period, it was determined that the regulations are legally sufficient and none of the commenters identified any legal reasons that the amendments should not be made. Federal regulations are incorporated by reference into COMAR and LEAs have to follow

the federal regulations as well as the COMAR. Therefore, the MSDE is not proposing any additional revisions to the proposed regulations.

Action

The MSDE requests permission to adopt the proposed amendments to COMAR 13A.06.07.06-.19, Student Transportation.

Attachments

COMAR 13A.06.07.06-.19, Student Transportation

Comment Summary

Comment Submissions

Title 13A

STATE BOARD OF EDUCATION

Subtitle 06 SUPPORTING PROGRAMS

13A.06.07 Student Transportation

Authority: Education Article, §§2-205, 5-218, and 8-410, Annotated Code of Maryland

Notice of Proposed Action

[23-025-P]

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

A. In this chapter, the following terms have the meanings indicated. A. School Vehicle Driver Trainee Qualifications. Before a school vehicle driver trainee transports a student in a school vehicle the trainee shall:

- (1)—(2) (text unchanged)
- (3) Complete the preservice instruction required under Regulation [.09A] .10A of this chapter;
- (4)—(6) (text unchanged)
- (7) Receive a negative controlled substances test result required under Regulation [.10] .11 of this chapter.

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

- (1) Do the following:
 - (a) (text unchanged)
 - (b) Complete the in-service instruction required under Regulation [.09B] .10B of this chapter;
- (2)—(3) (text unchanged)

C. (text unchanged)

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

A.—B. (text unchanged)

C. Disqualification for Criminal Conduct.

(1)—(3) (text unchanged)

(4) A school vehicle driver or trainee who engages in conduct prohibited under Regulation [.10B(2)] .11B(2) of this chapter is disqualified from operating a school vehicle in Maryland, except as provided under Regulation [.10D] .11D of this chapter.

D.—F. (text unchanged)

.08 School Vehicle Attendant Qualifications and Disqualifications.

A. A school vehicle attendant shall:

- (1) Complete the preservice instruction under Regulation [.09D(1)] .10D(1) of this chapter;
- (2)—(3) (text unchanged)
- (4) Complete the prescribed in-service instruction every 12 months under Regulation [.09D(2)] .10D(2) of this chapter.

B.—D. (text unchanged)

.11 Alcohol and Controlled Substances Use and Testing.

A.—C. (text unchanged)

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:] *successfully completed the substance abuse professionals education program, treatment recommendations, or both.*

[(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)—(4) (text unchanged)

E.—F. (text unchanged)

.12 General Standards.

A.—B. (text unchanged)

C. Vehicles other than Type I or Type II school vehicles and MFSAB vehicles may be used to transport students to and from school if:

- (1) (text unchanged)
- (2) Only one student is transported; [or]

(3) The vehicle used is a commercial motor coach[.]; *or*

(4) (text unchanged)

D.—M. (text unchanged)

.18 Taxicab Drivers Transporting Students with Disabilities.

A. Taxicab drivers involved in transporting students with disabilities to nonpublic special education facilities shall:

(1)—(3) (text unchanged)

(4) Receive a negative controlled substances test result as required under Regulation [.10] .11 of this chapter;

(5)—(6) (text unchanged)

B.—C. (text unchanged)

.19 Transportation Grant for Increased Ridership of Students with Disabilities.

A. Grants for the transportation of students with disabilities in the amount specified in Education Article, [§5-205] §5-218, Annotated Code of Maryland, shall be distributed on a bimonthly basis.

B. (text unchanged)

MOHAMMED CHOUDHURY
State Superintendent of Schools