

**DEPARTMENT OF TRANSPORTATION
DIVISION OF MOTOR VEHICLES**

Statutory Authority: 21 Delaware Code, Sections 302, 2708, 2709, 4362, 4363 and 4364
(21 **Del.C.** §§302, 2708, 2709, 4362, 4363 & 4364)
2 **DE Admin. Code** 2222

FINAL

ORDER

Proposed Regulation 2222 establishes administrative procedures for the issuance, renewal, removal, and reinstatement of the school bus (S) endorsement on Delaware commercial driver licenses. The proposed regulation was published in the *Delaware Register of Regulations* on August 1, 2008. The comment period remained open until August 31, 2008. There was no public hearing on proposed Regulation 2222.

Summary of the Evidence and Information Submitted

The Department received no public comments on the proposed regulation. The Division made some non-substantial grammar changes to the proposed regulation.

Findings of Fact

Based on Delaware law and the record in this docket, I make the following findings of fact:

1. The proposed regulation meets the requirements of the Administrative Procedures Act and is not in conflict with Delaware law.

Decision and Effective Date

Based on the provisions of 21 **Del.C.** §302 and the record in this docket, I hereby adopt Regulation 2222 and as may more fully and at large appear in the version attached hereto to be effective on October 10, 2008.

Text and Citation

IT IS SO ORDERED THIS 11th day of September 2008.

Carolann Wicks, Secretary of Transportation

2222 School Bus Driver Qualifications and Endorsements
(Formerly Regulation No. 35)

1.0 Authority

The authority to promulgate this regulation is 21 **Del.C.** §302, 21 **Del.C.** §2708, 21 **Del.C.** §2709, 21 **Del.C.** §4362, 21 **Del.C.** §4363, and 21 **Del.C.** §4364.

2.0 Purpose

2.1 This regulation establishes administrative procedures for the issuance, renewal, removal, and reinstatement of the school bus (S) endorsement on [a] Delaware commercial driver licenses.

2.2 The Division of Motor Vehicles (DMV) uses this regulation to initiate program requirements.

3.0 Applicability

This regulation interprets §2708 and §2709 of Title 21 of the **Delaware Code**.

4.0 Definitions.

The following words and terms, when used in the regulation, should have the following meaning unless the context clearly states otherwise:

“Air Brake Restriction” means a restriction that prohibits the CDL holder from operating a school bus (or any commercial motor vehicle) which is equipped with air brakes. The CDL will be marked with an **“L”**.

“Commercial Driver License (CDL)” means a driver license issued in accordance with the requirements of 21 **Del.C.** Chapter 26 which authorizes the holder to operate a certain class or classes of a commercial motor vehicle. The classes of a CDL are as follows:

CDL CLASS A - Required for the operation of vehicles with a registered, actual or gross vehicle weight rating (GVWR) of 26,001 or more pounds and the vehicle is towing a vehicle with a registered, actual or GVWR of 10,000 or more pounds. The holder of a Class A CDL may, with proper endorsement, operate any Class B or Class C vehicle.

CDL CLASS B - Required for the operation of vehicles with a registered, actual or GVWR of 26,001 or more pounds and not towing a vehicle with a GVWR of 10,000 or more pounds. The holder of a Class B CDL may, with proper endorsement, operate any Class C vehicle.

CDL CLASS C - Required for vehicles with a GVWR less than 26,001 pounds when the vehicle is designed to transport 16 or more passengers, including the driver, or for vehicles required to be placarded for carrying hazardous materials.

“Commercial Motor Vehicle (CMV)” means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

- Has a gross combination weight rating (GCWR) of 26,001 pounds or more inclusive of a towed unit(s) with a gross vehicle weight rating (GVWR) of more than 10,000 pounds; or
- Has a gross vehicle weight rating (GVWR) of 26,001 pounds or more; or
- Is designed to transport 16 or more passengers, including the driver; or
- Is of any size and is required to be placarded for the transportation of hazardous materials.

“Green Card” means a card issued by the district/school transportation supervisor that certifies satisfactory completion of an annual Department of Education (DOE) physical certification. The Green Card is to be in the immediate possession of the school bus driver at all times, while operating or in control of a school bus except when in possession of a CDL permit and undergoing training or evaluation and accompanied by a Certified Delaware School Bus Driver Trainer.

“P” Endorsement means an endorsement that authorizes a driver to transport passengers in all classes of commercial motor vehicles.

“Q” Endorsement means an endorsement that authorizes a driver to transport passengers in only Class B and Class C commercial motor vehicles.

“R” Endorsement means an endorsement that authorizes a driver to transport passengers in only Class C commercial motor vehicles.

“S” Endorsement means an endorsement that indicates the CDL holder meets the requirements of 21 **Del.C.** §2708 and this regulation and is authorized to operate a school bus. The CDL must also display a passenger (P, Q or R) endorsement to specify the class of commercial vehicle the driver may operate when transporting passengers.

“School Bus” means every motor vehicle which has the words “School Bus” displayed on the front and rear of the vehicle as specified in 21 **Del.C.** §4362(a) and which is painted the uniform color “national school bus chrome yellow” as specified in 21 **Del.C.** §4363(a), which is equipped with flashing lamps as specified in 21 **Del.C.** §4364(a), which meets the minimum size requirements as

specified in 21 Del.C. §4363(b), and which meets other regulations as required by the Department of Transportation (DOT) and the Department of Education.

“Yellow Card” means a card issued by the district/school transportation supervisor that certifies satisfactory completion of DOE requirements for an S endorsement as specified in 21 Del.C. §2708 (b)(3). The applicant will surrender the Yellow Card to DMV when the applicant’s [CDL and/or] school bus endorsement is issued. The DMV will forward the Yellow Cards to DOE.

5.0 Substances of Policy

5.1 Procedures.

5.1.1 Basic Requirements:

5.1.1.1 Basic. School bus drivers are required to have been issued and have in their possession, while driving a school bus, a CDL with an S endorsement, a passenger endorsement (P, Q or R), and a valid physical examination certification (Green Card).

5.1.1.2 Exceptions. These exceptions are only for drivers undergoing school bus training and evaluation.

5.1.1.2.1 Basic Training. For training and evaluation a driver may drive a school bus with a CDL permit or a valid CDL with the proper passenger endorsements (P, Q or R), but only when accompanied by a DOE Certified Delaware School Bus Driver Trainer (CDSBDT) or a DMV Examiner. In addition, for vehicle maneuvering skills training, a driver may drive a school bus with a CDL permit or a valid CDL with the proper passenger endorsements (P, Q or R) when accompanied by a driver with a valid CDL with an S endorsement and other proper endorsements.

5.1.1.2.2 45-Day Temporary S Endorsement for Classroom Training Unavailability. If a driver has completed all DMV CDL requirements, including the DMV road test, and the DOE 6 hours of on-bus training, DMV may, upon specific written DOE request, issue a CDL license along with a one-time only temporary S endorsement for a period not to exceed 45 days. This temporary S endorsement allows the driver to carry students without a CDSBDT, if all other S endorsement requirements have been met. This temporary S endorsement is intended for the driver who, due to exceptional circumstances, has been unable to complete the DOE classroom training. This temporary S endorsement will only be issued one time and cannot be extended.

5.1.1.2.3 Temporary S Endorsement Conversion. DMV will convert the temporary S-endorsed CDL to an S-endorsed CDL upon receipt of certification (Yellow Card) issued to the applicant by the district/school transportation supervisor (5.1.2.10 of this regulation) indicating that the required training has been completed. DMV will forward the Yellow Cards to DOE.

5.1.2 Initial Issuance Requirements: All of the following requirements shall be met by all new and out-of-state transfer applicants for a school bus (S) endorsement. Drivers must:

5.1.2.1 Be 18 years of age or older with at least one (1) year of valid driving experience.

5.1.2.2 Have a valid Delaware CDL with a passenger (P, Q or R) endorsement.

5.1.2.3 Complete a driver training course with specific course content as determined by 49 C.F.R. 383.123(a)(2) and DOE requirements as specified in 21 Del.C. §2708(b)(3).

5.1.2.4 Pass the school bus knowledge test administered by DMV containing specific content as required by 49 C.F.R. 383.123(a)(2).

5.1.2.5 Pass a road test in a school bus administered by DMV as required by 49 C.F.R.383.123 (a)(3).

5.1.2.6 Not have more than five (5) points (full point value) on the applicant’s three (3) year driving record. NOTE: Recalculated points and the Defensive Driving Course three (3) point credits do not apply to S endorsement holders in meeting this requirement.

5.1.2.7 Not have had the applicant’s license suspended, revoked or disqualified in this State or any other jurisdiction for moving violations in the last five (5) years. This five (5) year

period will begin from the date the suspension, revocation or disqualification has been cleared. Certified driving records from other jurisdictions may be requested from these applicants for DMV to verify compliance with this section.

5.1.2.8 Never been convicted of any crime under the laws of this State or any other jurisdiction as specified in 21 **Del.C.** §2708(b)(7).

5.1.2.8.1 Prior to being issued a S endorsement applicants must complete a Federal Bureau of Investigation and a State Bureau of Investigation criminal history background check to verify that ~~he/she is~~ they are] clear of any disqualifying crime as specified in 21 **Del.C.** §2708(b)(7) and to ensure applicants are qualified in accordance with 5.1.2.8 above.

5.1.2.8.2 Questionable criminal history background check reports will be reviewed by the Department of Transportation's (DOT) Deputy Attorney General. The DOT Deputy Attorney General will forward the questionable criminal history background check reports, with issuance recommendation, to DMV.

5.1.2.9 Have a valid physical examination certification (Green Card).

5.1.2.10 The applicant will be issued a School Bus Driver's Certificate (Yellow Card) by a district/school transportation supervisor as certification of DOE requirements being completed as specified in 21 **Del.C.** §2708(b)(3). The applicant will surrender the Yellow Card to DMV when the applicant's ~~CDL and/or~~ school bus (S) endorsement is issued. DMV will forward the Yellow Cards to DOE.

5.1.2.11 Drivers transferring into Delaware with other jurisdiction school bus endorsed licenses will be required to meet all Delaware Initial Issuance Requirements (5.1.2 this regulation).

5.1.2.11.1 Transferring S endorsement holders shall provide a five year motor vehicle driving record from ~~his/her~~ their] previous jurisdiction or jurisdictions to DMV. DMV will electronically check transferring S endorsement holders' motor vehicle records. If the electronic check is unable to be performed, transferring S endorsement holders will need to provide an official certified copy of their motor vehicle driving records to DMV. DMV will ensure these driving records meet the requirements in 5.1.2.6 and 5.1.2.7.

5.1.2.11.2 In accordance with 5.1.2.10, applicants will be issued a School Bus Driver's Certificate (Yellow Card) by district/school transportation supervisors.

5.1.2.11.3 All transferring S endorsement holders will be required to pass a DMV-administered road test in a school bus per 5.1.2.5, regardless of past experience, training or qualifications.

5.1.2.11.4 All transferring S endorsement holders will be required to pass a school bus knowledge test administered by DMV per 5.1.2.4, regardless of past experience, training or qualifications.

5.1.3 Removal of School Bus Endorsements:

5.1.3.1 All school bus (S) endorsement removals, except those under 5.1.3.8 below, will be approved by the Chief of Driver Services, the CDL Program Manager or the CDL Management Analyst.

5.1.3.2 The school bus (S) endorsement will be removed when driving privileges are withdrawn.

5.1.3.3 The school bus (S) endorsement will be removed when a driver's record exceeds eight (8) points (full point value) for moving violations on the driver's three (3) year driving record. NOTE: Recalculated points and the Defensive Driving Course three (3) point credits do not apply to S endorsement holders in meeting this requirement.

5.1.3.4 The school bus (S) endorsement will be removed when the DMV is made aware of a conviction of a disqualifying crime as specified in 21 **Del.C.** §2708(b)(7).

5.1.3.5 The school bus (S) endorsement will be removed when the DMV receives in writing, a report from a physician that a driver is not medically qualified to operate a motor vehicle ~~and/~~ or [a] commercial motor vehicle as specified in 21 **Del.C.** §2733(a)(3).

- 5.1.3.6 The school bus (S) endorsement will be removed if a driver downgrades from a CDL to a Class D license.
- 5.1.3.7 Any driver that has a school bus (S) endorsement and is required to register as a sex offender with DMV pursuant to 11 Del.C. §4120 and § 4121, shall have the school bus (S) endorsement removed.
- 5.1.3.8 DMV will notify the S endorsement holder and DOE, in writing, when an S endorsement is removed from a license including the reason for removal. This notification will entitle the S endorsement holder to request a DMV hearing and will also require the S endorsement holder to notify his ~~her~~ employer.
- 5.1.4 School Bus Endorsement Reinstatement: A school bus (S) endorsement, once removed, may be reinstated if all other licensing requirements are met. If the school bus (S) endorsement is withdrawn for one year or more, then the driver will need to retake all DMV school bus (S) endorsement testing requirements, pay appropriate fees, and provide DMV with a new School Bus Driver's Certificate (Yellow Card).
 - 5.1.4.1 If the school bus (S) endorsement was removed for points, the driver shall be eligible for reinstatement once the full point total on his ~~her~~ three (3) year driving record falls to eight (8) points or below. NOTE: Recalculated points and the Defensive Driving Course three (3) point credits do not apply to school bus drivers in meeting this eligibility.
 - 5.1.4.2 If the school bus (S) endorsement was removed due to a suspension, revocation or disqualification for moving violations, the driver shall be eligible to reapply for the school bus (S) endorsement five (5) years from the date the suspension, revocation or disqualification has been cleared, as long as there are no further violations incurred affecting eligibility during this time period.
 - 5.1.4.3 If the school bus (S) endorsement was removed due to a medical reason, the driver may be eligible for reinstatement once approved by the DMV.
 - 5.1.4.4 If the driver voluntarily downgrades from an S endorsed CDL to a Class D license and then the driver wishes to reinstate the S endorsed CDL, the driver will be required to meet the initial issue requirements in accordance with 5.1.2 of this regulation, if the downgrade has been over one (1) year, including providing a new School Bus Driver's Certificate (Yellow Card).
 - 5.1.4.5 Any driver that has been convicted of a disqualifying crime as outlined in 21 Del.C. §2708(b)(7)(a-f) will never be eligible for a school bus (S) endorsement or reinstatement regardless of the amount of time since the conviction.
 - 5.1.4.6 After five (5) years has passed since the completion of all sentencing requirements resulting from the conviction of any other felony crime, other than those listed in 21 Del.C. §2708(b)(7)(a) through (f), and which have not been pardoned, then 21 Del.C. §2708(b)(7)(g) applies, and the driver must reapply as a new applicant for a school bus (S) endorsement. DMV may seek DOT Deputy Attorney General guidance/clarification in these situations.
- 5.2 Driver's Status, Records and Record's Review: The following shall apply concerning the driving records and the status of all Delaware-licensed school bus drivers.
 - 5.2.1 Upon a request from DOE, a school district or a school bus contractor, DMV shall provide a copy of a school bus driver's Delaware driving record free of charge. These agencies shall certify on DMV forms that they understand and will comply with the Delaware Privacy Act provisions as found in 21 Del.C. §305.
 - 5.2.2 DMV shall at any time review the driving records of all Delaware-licensed school bus drivers to ensure they continually meet school bus qualification requirements. This review is accomplished through a computerized search of records for violations, which may result in the removal of a school bus (S) endorsement and notification to the driver and the DOE. Although not a prerequisite to a suspension, revocation or removal of an endorsement or a license, DMV will attempt to send warning letters to S endorsement holder's with copies of such letters being sent to DOE, when a S

endorsement holders driving record indicates a situation where additional violations could readily result in the withdrawal of driving authority or school bus (S) endorsement.

5.2.3 Drivers moving to Delaware and requesting a school bus (S) endorsement shall provide to the DMV a copy of their driving records for the previous five (5) years from the driver's former state(s) of record. DMV will electronically check the drivers' motor vehicle records. If the electronic check is unable to be performed, the driver will need to provide an official certified copy of his[~~her~~] motor vehicle driving record to DMV.

6.0 Severability

If any part of this regulation is held to be unconstitutional or otherwise contrary to law by a court of competent jurisdiction, said portion shall be severed, and the remaining portions shall remain in full force and effect under Delaware law.

7.0 Effective Date

This regulation shall be effective 10 days from the date the order is signed and it is published in its final form in the *Register of Regulations* in accordance with 29 **Del.C.** §10118(e) or October 1, 2008, whichever is later.

12 DE Reg. 519 (10/01/08) (Final)