

NEBRASKA ADMINISTRATIVE CODE

TITLE 247, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 8

NEBRASKA DEPARTMENT OF MOTOR VEHICLES

**RULES AND REGULATIONS GOVERNING THE CERTIFICATION OF THIRD-PARTY TESTERS
AND THIRD-PARTY EXAMINERS FOR THE COMMERCIAL DRIVER'S LICENSE.**

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CHAPTER 8 RULES AND REGULATIONS GOVERNING THE CERTIFICATION OF THIRD-PARTY TESTERS AND THIRD-PARTY EXAMINERS FOR THE COMMERCIAL DRIVER'S LICENSE.

001 SCOPE.

001.01 Applicability. These rules and regulations apply to the following entities and individuals:

001.01A Any Third-Party Tester as defined in these rules and regulations;

001.01B Any Third-Party Examiner as defined in these rules and regulations; and,

001.01C Any entity or person offering a training course to qualify an individual for certification as a Third-Party Examiner.

001.02 Incorporation by Reference. The following regulations and standards are adopted, promulgated and incorporated in these rules and regulations by reference:

001.02A Title 247 NAC Chapter 10, and the federal regulations and standards incorporated therein, governing the administration of the commercial driver's license program, as amended; and,

001.02B Federal Motor Carrier Safety Administration (FMCSA) regulations 49 CFR Part 383, Commercial Driver's License Standards; Requirements and Penalties, as amended.

002 DEFINITIONS.

002.01 Approved training course means a training course approved by the Department for the training of Third-Party Examiners.

002.02 Class A combination vehicle means any combination of motor vehicles and towed vehicles with a gross vehicle weight rating of more than twenty-six thousand (26,000) pounds if the gross vehicle weight rating of the vehicles being towed are in excess of ten thousand (10,000) pounds.

002.03 Class A testing certification means certification by the Department authorizing a Third-Party Tester or Third-Party Examiner to administer skills tests for drivers of Class A, Class B or Class C commercial motor vehicle.

002.04 **Class B heavy straight vehicles** means any single commercial motor vehicle with a gross vehicle weight rating of twenty-six thousand one (26,001) pounds or more or any such commercial motor vehicle towing a vehicle with a gross vehicle weight rating not exceeding ten thousand (10,000) pounds.

002.05 **Class B testing certification** means certification by the Department authorizing a Third-Party Tester or Third-Party Examiner to administer skills tests for drivers of Class B or Class C commercial motor vehicles.

002.06 **Class C small vehicle** means any single commercial motor vehicle with a gross vehicle weight rating of less than twenty-six thousand one (26,001) pounds or any such commercial motor vehicle towing a vehicle with a gross vehicle weight rating not exceeding ten thousand (10,000) pounds comprising (i) motor vehicles designed to transport sixteen (16) or more passengers, including the driver; and (ii) motor vehicles used in the transportation of hazardous materials and required to be placarded.

002.07 **Class C testing certification** means certification by the Department authorizing the Third-Party Tester or Third-Party Examiner to administer skills tests for drivers of Class C small vehicles.

002.08 **Commercial Driver's License ("CDL")** means an operator's license issued in accordance with the requirements of the Motor Vehicle Operator's License Act to an individual which authorizes such individual to drive a class of commercial motor vehicle or any motor vehicle, except a motorcycle, on highways.

002.09 **Commercial motor vehicle** means a motor vehicle used or designed to transport passengers or property (a) if the motor vehicle has a gross vehicle weight rating of more than twenty-six thousand (26,000) pounds, (b) if the motor vehicle is designed to transport sixteen (16) or more passengers, including the driver, or (c) if the motor vehicle is transporting hazardous materials and is required to be placarded. Commercial motor vehicle shall not include (a) a farm truck other than a combination of truck-tractors and semitrailers when such farm truck is operated within one hundred fifty (150) miles of the registered owner's farm or ranch, (b) any self-propelled mobile home or motor vehicle drawing a cabin trailer, (c) any emergency vehicle operated by a public or volunteer fire department, or (d) any motor vehicle owned or operated by the United States Department of Defense or Nebraska National Guard when such motor vehicle is driven by uniformed, military operators performing duty in the active service of the United States or this state.

002.10 **Conviction** means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

002.11 **Department** means the Nebraska Department of Motor Vehicles.

002.12 **Director** means the Director of the Department of Motor Vehicles.

002.13 **Disqualification** means the suspension, revocation, or cancellation or any other withdrawal by any state or the Federal Motor Carrier Safety Administration of the privilege to operate a commercial motor vehicle.

002.14 **Driving a commercial motor vehicle while under the influence of alcohol** means committing any one (1) or more of the following acts: driving a motor vehicle while the person's alcohol concentration is 0.04 percent or more; driving under the influence of alcohol, as prescribed by State law; or refusal to undergo such testing as is required by any State or jurisdiction.

002.15 **Employee** means any person who works full time and is on the payroll of a Third-Party Tester, excludes an independent contractor.

002.16 **Employer** means any person, including the United States, a state, or a political subdivision of a state, which owns or leases a commercial motor vehicle or assigns employees to operate a commercial motor vehicle.

002.17 **FMCSA** means the Federal Motor Carrier Safety Administration.

002.18 **Skills test** means a test, in addition to the CDL knowledge test, required to be successfully completed by a CDL applicant prior to the issuance of a CDL license.

002.19 **Third-Party Examiner applicant** means the individual who applies to the Department to obtain or renew a Third-Party Examiner certificate.

002.20 **Third-Party Tester** means any another state's licensing authority, any agency, department, board, or commission of this state, any employer, any public or private driver training facility, or any political subdivision of this state authorized by the Director to conduct the driving skills examination for the issuance of commercial drivers' licenses.

002.21 **Third-Party Tester applicant** means the individual or entity making application for the purpose of acquiring or renewing a Third-Party Tester certificate.

002.22 **Training course applicant** means the sponsor of a training course making application for approval of the Training Course.

003 **CERTIFICATION OF THIRD-PARTY TESTERS.**

003.01 **Certificate.** A Third-Party Tester, before administering in or attempting to administer skills testing, shall hold a certificate issued or renewed by the Department authorizing the Third-Party Tester to engage in skills testing for that class of commercial motor vehicle.

003.02 **Requirements for Certification.** To have a certificate issued, renewed or remain in effect, the Third-Party Tester shall demonstrate it meets the following requirements:

003.02A Be another state's licensing authority, any agency, department, board, or commission of this state, any employer, any public or private driver training facility, or any political subdivision of this state authorized by the Director to conduct the driving skills examination for the issuance of commercial drivers' licenses;

003.02B Ensure that each employee who conducts the driving skills test is certified in accordance with 009 of these rules and regulations;

003.02C Ensure that each Third-Party Examiner employed by the Third-Party Tester administers at a minimum six (6) skills test per year;

003.02D Designate an individual authorized to act on behalf of the third party as the Third-Party Tester's contact person with the Department; and,

003.02E Continuously maintain a place of business which includes at least one (1) permanent, regularly occupied structure within the State of Nebraska.

003.03 Application for Certification. If a certificate or renewal of a certificate is desired, the Third-Party Tester shall:

003.03A Submit a completed application form, DMV 06-52, to the Department and include at a minimum, the following:

003.03A1 The legal name, current address and telephone number of the Third-Party Tester's principal office or headquarters in Nebraska;

003.03A2 The name, title, current address, telephone number, and e-mail address of the individual who has been designated the applicant's contact person with the Department;

003.03A3 A description of the vehicle fleet registered in Nebraska by the applicant, including the number of commercial motor vehicles by class and type;

003.03A4 The name, date of birth, driver's license number and current home address of those full-time, payroll employees who are certified by the Department as Third-Party Examiners;

003.03A5 The address of each Nebraska location (not to exceed one (1) test route per Third-Party Examiner) where the applicant intends to conduct the skills test and a description of the off-road facilities as well as a map and written description of the test route that will be used for the on-road portion of the skills test;

003.03A6 The name, driver's license number and current home address of those full-time, payroll employees who desire certification by the Department as Third-Party Examiners;

003.03A7 A copy of the application(s) of those full-time, payroll employees who desire certification as Third-Party Examiners; and,

003.03A8 Signature of the applicant or his or her designated representative certifying that the information included in the application is true and accurate.

003.03B Fee. Enclose a check or money order made out to the Department of Motor Vehicles for the \$100.00 fee with the completed application; and,

003.03C Agreement. Complete a Third-Party Tester Agreement with the Department.

003.04 Pre-approval Inspection. Upon receipt of a completed application, the Department will conduct an on-site inspection of the location(s) where the third party intends to conduct the skills test and the proposed test route(s).

003.05 Approval. The Department has thirty (30) days after receipt of a completed

application for certification to determine if the applicant will be permitted to enter into a Third-Party Tester Agreement with the Department. The Department will approve or deny the application in the form of a written notice to the applicant.

003.06 Display of Certificate. Once certified, the Third-Party Tester must display the certificate prominently in the office of the Third-Party Tester.

004 DENIAL, REFUSAL TO RENEW, SUSPENSION OR REVOCATION OF THIRD-PARTY TESTER CERTIFICATE.

004.01 Grounds. The Department may deny, refuse to renew, suspend or revoke a Third-Party Tester certificate, whether initial or renewed, for any of the following reasons:

004.01A Engaging in or attempting to engage in administration of skills testing without a certificate;

004.01B Failure by each Third-Party Examiner employed by the Third-Party Tester to administer at a minimum six (6) skills test per year;

004.01C Fraud, forgery or misrepresentation in an application;

004.01D Failure to provide notice to the Department as required by 008 of these rules and regulations;

004.01E Failure to maintain or to permit examinations, inspections, or audits as required by 007 of these rules and regulations;

004.01F Failure to permit on-site inspections as required by 007 of these rules and regulations;

004.01G Failure to pay the fee as required by 006 of these rules and regulations;

004.01H Failure at any time to comply with the Motor Vehicle Operator's License Act or the rules and regulations adopted and promulgated by the Department under that Act;

004.01I Failure to comply with the terms of the Third-Party Tester Agreement;

004.01J Lack of business stability;

004.01K Fraud, forgery or falsification of any documents relating to Third-Party Examiners or the skills test;

004.01L Failure to provide the Department with a twenty-four hour (24-hour) advance notice of skills test appointments scheduled pursuant to 008.01A of these rules and regulations;

004.01M Failure to provide the Department with the pass/fail results and scores of each applicant tested within five (5) days of the test date pursuant to 008.01B of these rules and regulations;

004.01N Failure by a CDL driver previously tested by the Third-Party Tester of the skills tests on a retest by the Department conducted pursuant to 007.05 of these rules and

regulations;

004.01O Suspension or revocation of a driver's license, or disqualification of a commercial motor vehicle driver's license, within the previous three (3) years of the date of application;

004.01P Conviction for driving a motor vehicle under the influence within the previous three (3) years of the date of application; and,

004.01Q Any other cause adversely reflecting on the Third-Party Tester's fitness or capacity to conduct skills testing.

005 RENEWALS OF THIRD-PARTY TESTER CERTIFICATES.

005.01 Expiration. A certificate will expire on the second anniversary of its effective date unless renewed.

005.02 Notice. At least one hundred twenty (120) days prior to expiration, the Department will send to the certified Third-Party Tester at its last known address, a renewal notice which states the following:

005.02A The date on which the current certificate expires;

005.02B The date by which the renewal application must be received by the Department for the renewal to be issued and mailed before the certificate expires; and,

005.02C The amount of the renewal fee.

005.03 All renewal application forms must be submitted to the Department not less than ninety (90) days prior to the time the previous certification expires. The Department will not be responsible for the timely issuance of any renewal certificate when the application is not received in the requested timeframe.

006 SCHEDULE OF FEES FOR THIRD-PARTY TESTER CERTIFICATES.

006.01 Amount. For issuance or renewal of a Third-Party Tester certificate, the fee is \$100.00 for each applicant for a Third-Party Tester certificate. The fee is refundable if the application is initially denied by the Department or returned due to incompleteness or deficiency. The fee covers a two-year (2-year) period beginning on the effective date of issuance or renewal thereof.

006.02 Refunds. No portion of the fee will be refunded if the certificate is suspended or revoked during the two-year (2-year) period or if the Third-Party Tester otherwise discontinues activity within the State during any portion of the two-year (2-year) period.

007 RECORDS, INSPECTIONS AND RETESTING.

007.01 Records. Any Third-Party Tester shall keep records as follows:

007.01A Third-Party Examiner Record. Retain, at each approved testing location, a record of each Third-Party Examiner in the employ of each Third-Party Tester at that location. Each record shall be maintained a minimum of two (2) years after the date the

Third-Party Examiner leaves the employment of the Third-Party Tester. Each record shall include:

007.01A1 A valid "Examiner Identification Card" (including name, residential address, and social security number) indicating that the Examiner has been certified by the Department;

007.01A2 A copy of the Third-Party Examiner's current driving record, which must be updated annually; and,

007.01A3 Evidence that the Third-Party Examiner is a full-time, payroll employee of the Third-Party Tester.

007.01B **Driver Records.** Retain, at each approved testing location, a record of each driver for whom the Third-Party Tester conducts a skills test, whether or not the driver passes or fails the test. Each such record shall be retained for a minimum of two (2) years from the date of the test and shall include:

007.01B1 The complete name and address of the driver;

007.01B2 The driver's social security number, driver's license number and the name of the state or jurisdiction that issued the license held by the driver at the time of the test;

007.01B3 The test score sheet(s) showing the results of the skills test;

007.01B4 The name and identification number of the Third-Party Examiner conducting the skills test;

007.01B5 The license plate number of the commercial motor vehicle(s) used to conduct the testing and whether or not the vehicle was equipped with air brakes; and,

007.01B6 A copy of the completed Certification of Completion of the Driving Skills Exam (DMV Form 06-55) of which the original was given to the driver.

007.01C **List of Drivers.** Maintain a list of all drivers for which the Third-Party Tester conducted a skills test which list will be made available to the Department on request.

007.02 **Random Examinations, Inspections and Audits.** The FMCSA, its representative(s) and the Department may conduct random examinations, inspections and audits of Third-Party Testers with or without prior notice.

007.03 **On-Site Inspections.** At least annually, the Department will conduct on-site inspections of Third-Party Testers.

007.04 **Observe Testing or Retests.** At least annually, a representative of the Department shall take the tests actually administered by the Third-Party Tester as if the representative were a test applicant, or retest a sample of drivers who were examined by the third-party to compare pass/fail results.

007.05 **Sample Retests.** The Department may test a sample of CDL holders who were examined by the Third-Party Tester or have Department employees take the skills test to ensure

results consistent with examinations administered by the Department as follows:

007.05A The drivers to be tested in this sample shall be selected by the Department from a list of drivers required to be kept by the Third-Party Tester in 007.01C of these rules and regulations by Third-Party Tester. Sample drivers will be notified of the retesting by the Department via certified mail at least three (3) weeks prior to the retesting date. If the retesting date is not convenient for the sample drive, a one-time continuance will be granted. In the case of a continuance, the rescheduled retest date must occur within two (2) weeks of the original retest date. Retesting will take place at the Third-Party Tester location. Drivers who fail to show up for this retesting shall have their CDL cancelled by the Department;

007.05B It shall be the responsibility of the Third-Party Tester to provide the appropriate vehicle for these tests;

007.05C Simple failure of the sample test conducted by the Department representative shall not prejudice a CDL already issued to that driver; and,

007.05D If the driver fails the test, the auditor may require that the driver be recalled and reexamined at a Department CDL exam location. Failure of the skills test at the Department location shall result in the cancellation of the CDL and constitutes grounds for suspension or revocation of the Third-Party Tester's certification.

007.06 The Department will prepare a written report of the results of each inspection and audit. A copy of the report will be provided to the Third-Party Tester.

008 **NOTIFICATION.**

008.01 **Required Notice.** The Third-Party Tester must notify the Department within the specified period of time of the following:

008.01A At least a twenty-four hour (24-hour) advance notice of all skills testing appointments made by the Third-Party Examiners employed by the Third-Party Tester. This information must be sent electronically to the Department's third-party testing database;

008.01B The pass/fail results and scores of all applicants administered skills testing by the Third-Party Examiners employed by the Third-Party Tester. This information must be sent electronically to the Department's third-party testing database within five (5) days of the date of testing;

008.01C Any change in the Third-Party Tester's name, legal status or address in writing within ten (10) days of its date of occurrence;

008.01D Any change in the Third-Party Examiners employed by the Third-Party Tester or their driving status within ten (10) days of its date of occurrence;

008.01E If the Third-Party Tester ceases business operations in Nebraska, the Third-Party Tester shall notify the Department ten (10) days prior to its date of occurrence; and,

008.01F If the Third-Party Tester's insurance as required by the Third-Party Tester Agreement is cancelled or altered by the insurance company, the Third-Party Tester shall

notify the Department within five (5) days of its date of occurrence. In addition, the Third-Party Tester shall give the Department not less than 30 days' notice before cancellation or alteration of required insurance.

008.02 Failure to Notify. Failure to give timely notice to the Department as required constitutes grounds for revocation or suspension of the Third-Party Tester's certificate.

009 THIRD-PARTY EXAMINER CERTIFICATION.

009.01 Certificate. An individual, before engaging in or attempting to engage in, third-party examination, shall hold a certificate issued or renewed by the Department authorizing the individual to be a Third-Party Examiner for that class of commercial motor vehicle.

009.02 Requirements for Certification. Applicants for Third-Party Examiner certificates must comply with the following:

009.02A Meet the same qualifications and training standards as State examiners, to the extent necessary to conduct skills test in compliance with 49 CFR Part 383, Subparts G and H;

009.02B Be a full-time, payroll employee of a Third-Party Tester requesting initial certification or renewal of certification as a Third-Party Tester. An individual certified by the Department as a Third-Party Examiner when these rules become effective must be a payroll employee of a Third-Party Tester, but is not required to work full time for that entity. If the Third-Party Examiner changes employment, the Third-Party Examiner must be a full-time, payroll employee of the Third-Party Tester;

009.02C Agree to administer at a minimum six (6) skills test per year;

009.02D Have had no suspensions or revocations on his or her driving record within the last two (2) years, including no convictions for DWI or any related alcohol or drug offense in connection with motor vehicle use;

009.02E Possess a valid Nebraska license or valid license from their state of residence;

009.02F Be at least twenty-one (21) years of age; and,

009.02G Have a high school diploma or its equivalent.

009.03 Application for Certification. To have a Third-Party Examiner certificate issued, renewed or remain in effect, the individual shall:

009.03A Submit a completed application, DMV 06-59, and include as a minimum, the following:

009.03A1 The individual's name, title, current home address, telephone number, e-mail address, date of birth, social security number, driver's license number and state of issuance;

009.03A2 The name, address and telephone number of the individual's employer;

009.03A3 The name, title, current address, telephone number and e-mail address

of the individual who has been designated the employer's contact person with the Department;

009.03A4 Education (high school diploma or equivalent);

009.03A5 Signature of the applicant and date; and,

009.03A6 Attached to the application must be evidence, acceptable to the Department, from the payroll office verifying that the Third-Party Examiner is a full-time, payroll employee.

009.04 Approval. The Department has thirty (30) days after receipt of an application for certification to deny or approve the application in the form of a written notice.

010 RENEWALS OF THIRD-PARTY EXAMINER CERTIFICATES.

010.01 Expiration. A Third-Party Examiner Certificate will expire on the second anniversary of its effective date unless renewed.

010.02 Notice. At least sixty (60) days prior to expiration, the Department will send to the certified Third-Party Examiner at his or her last known address, a renewal notice which states the following:

010.02A The date on which the current certificate expires; and,

010.02B The date by which the renewal application must be received by the Department for the renewal to be issued and mailed before the certificate expires.

010.03 Submission Date. Renewal application forms must be submitted to the Department at least thirty (30) days prior to the time the previous certification expires. The Department will not be responsible for the timely issuance of any renewal certificate when the application is not received in the requested manner.

011 DENIAL, REFUSAL TO RENEW, SUSPENSION OR REVOCATION OF THIRD-PARTY EXAMINER CERTIFICATE.

011.01 Grounds. The Department may deny, refuse to renew, suspend or revoke a Third-Party Examiner certificate, whether initial or renewed, for any of the following reasons:

011.01A Engaging in or attempting to engage in skills testing without a certificate;

011.01B Failure by each Third-Party Examiner employed by the Third-Party Tester to administer at a minimum six (6) skills test per year;

011.01C Fraud, forgery or misrepresentation in an application;

011.01D Failure to provide the Department with a twenty-four hour (24-hour) advance notice of skills test appointments scheduled pursuant to 008.01A of these rules and regulations;

011.01E Failure to provide the Department with the pass/fail results and scores of each applicant tested within five (5) days of the test date pursuant to 008.01B of these rules and

regulations;

011.01F Failure at any time to comply with the Motor Vehicle Operator's License Act or the rules and regulations adopted and promulgated by the Department under that Act;

011.01G Suspension or revocation of a driver's license or disqualification of a commercial motor vehicle driver's license, within the previous three (3) years of the date of application;

011.01H Conviction for driving while under the influence of alcohol within the previous three (3) years of the date of application;

011.01I Immoral or dishonorable conduct evidencing unfitness or lack of proficiency to act as a Third-Party Examiner;

011.01J Fraud, forgery or misrepresentation in completion of any documents relating to the skills test;

011.01K Any other cause adversely reflecting on the Third-Party Examiner's fitness or capacity to administer skills testing; and,

011.01L Failure to complete training review courses or additional training as required by the Department.

012 TRAINING REQUIREMENTS FOR THIRD-PARTY EXAMINERS.

012.01 Initial Training Course. To have a Third-Party Examiner certificate issued, the Third-Party Examiner applicant shall submit a completed application (DMV 06-59) within sixty (60) days of completing the initial training course. If the application is not submitted prior to the deadline, the Department may require the applicant to retake the initial training course before proceeding with the application process.

012.01A Third-Party Examiners who have had their Third-Party Examiner certificates suspended or revoked will be required to retake the initial training course before proceeding with the application process.

012.02 Retraining or Additional Training. To have a Third-Party Examiner certificate renewed or remain in effect, the Third-Party Examiner must complete retraining or additional sessions as often as the Department may require.

012.03 Notification. The Department shall notify Third-Party Examiners of any retraining or additional training requirements in writing to the last known address of the Third-Party Examiner, as well as the date by which retraining or additional requirements must be completed to maintain certification as a Third-Party Examiner.

013 TRAINING COURSE APPROVAL.

013.01 Approval Requirements. All Third-Party Examiner training or review courses, including lectures, seminars, course materials and other instructional programs, must be reviewed and approved by the Department before they are approved. Applicants for course approval must comply with the following:

- 013.01A** The application and curriculum described in 013.06 of these rules and regulations must be submitted at least thirty (30) days prior to the date on which the course is to be given;
- 013.01B** Courses must be taught by individuals with education or experience that is appropriate for the subject matter presented;
- 013.01C** The sponsor must ensure that an individual attends all course presentations and passes the examination with a score of at least eighty percent (80%) for successful course completion;
- 013.01D** All Third-Party Examiners must meet the same qualification and training standards as State examiners, to the extent necessary to conduct skills test in compliance with 49 CFR Part 383, Subparts G and H;
- 013.01E** The sponsor must provide a training site to accommodate students comfortably and adequately and to ensure proper sanitation and safety, including:
- 013.01E1** A comfortable, air conditioned, controlled lighting classroom with ample working and testing space for twelve (12) students and several observers; and,
 - 013.01E2** Ready access to restrooms, refreshment and eating facilities.
- 013.01F** The training site must include a flat paved parking area, free of traffic, but easily accessible by large vehicles and sufficient in size to accommodate two (2) vehicles at a time for vehicle inspection test training as well as straight and combination vehicles up to sixty feet (60') in length for training in the basic control skills test maneuvers; and,
- 013.01G** The sponsor must provide the following equipment to be used in training:
- 013.01G1** Viewgraph projection equipment and screen; chalk boards or other marking boards; and,
 - 013.01G2** Striping equipment, pavement paint, tape measures, string chalk, and traffic cones for laying out the basic control skills test.
- 013.02** **Documentation of Course Completion.** The sponsor must document an individual's successful completion of a course in a numbered certificate or other proof of course completion approved by the Department, to be given to the individual no later than fifteen (15) days following the date of the final examination. The certificate shall state the following:
- 013.02A** The student's name;
 - 013.02B** The dates that the course was attended;
 - 013.02C** That the student successfully completed the training and passed the final examination; and,
 - 013.02D** The class(es) of vehicle for which the student was trained to examine.
- 013.03** **List to Department.** The sponsor must submit the information specified in 013.02 to the Department in the form of a letter containing a list of students completing each training

course with their certificate numbers and signed by the administrator of the course. The list shall be submitted no later than fifteen (15) days after the date of the final examination.

013.04 Correspondence. No correspondence courses will be approved by the Department.

013.05 Application for Approval. To apply for approval of a Third-Party Examiner training or review course, the sponsor shall submit the original of a completed application, DMV Form 06-77, and provide the following:

013.05A The sponsor's name, address and phone number;

013.05B The title of the course;

013.05C The class(es) of vehicles for which the training is intended;

013.05D Whether the course is initial, review or additional training;

013.05E The location(s) at which the training is intended to take place;

013.05F The dates or time period over which the training will be presented and the frequency with which it will be offered;

013.05G A list of the individuals who will present the course, including their experience, education and other qualifications;

013.05H The maximum number of students to be enrolled in each presentation of the training;

013.05I The proposed charge for the training;

013.05J A list of all course materials, including, but not limited to, handouts, student manuals, instructor notebooks;

013.05K A training schedule showing daily assignments for each instructional group, location of instruction and required vehicles;

013.05L A copy of the road test route used for training and which incorporates all required characteristics for CDL road testing; and,

013.05M The signature of the administrator of the sponsor making application.

013.06 Approval. Within thirty (30) days of receipt of a complete application, the Department will approve or deny the application in the form of a written notice to the applicant.

013.07 Reapproval. Once approval for a Third-Party Examiner training course has been granted, the Department need not reapprove a course for each occasion it is administered, but will make an annual determination of whether or not to extend training course approval. The sponsor of an approved course shall submit the following information to the Department annually on the anniversary of course approval:

013.07A Any updates to course materials;

013.07B A summary of any alterations or modifications to previously submitted information; and,

013.07C A report to include the frequency with which the course was given and the numbers attending.

013.08 Denial, Suspension or Revocation of Approval. The Department may deny, suspend or revoke approval of a Third-Party Examiner training course for failure to meet the requirements of the Motor Vehicle Operator's License Act or the provisions of these rules and regulations.

014 INCOMPLETE OR DEFICIENT APPLICATIONS.

014.01 Notice. If an application is deficient or incomplete, the Department will notify the applicant of the information necessary to complete the application and retain the application submitted pending receipt of the additional information.

014.02 Time to Correct Deficient or Incomplete Applications. The applicant has fifteen (15) days after notification by the Department to provide the information necessary to complete the application. If the Department has not received the information within fifteen (15) days, the application will be returned to the applicant along with the submitted fee.

015 FORMAL HEARINGS: PROCEDURE AND NOTICE.

015.01 Notice. Whenever the Department denies an initial application for or refuses renewal of, or suspends or revokes any certificate or approval, the Department shall notify the party of its intent to deny, refuse renewal, suspend or revoke in the following manner:

015.01A Notice shall be made in writing and sent by certified mail to the party's last-known address; and,

015.01B Notice shall state that the party may request a formal hearing on the denial, refusal to renew, suspension or revocation by the Department by submitting a written request for formal hearing with the Department within thirty (30) days of the issuance of the notice.

015.02 Notice of Formal Hearing. Upon receipt of a written request for a hearing, the Director shall set a hearing date at a time and location designated by the Director, and notify the party as follows:

015.02A Notice shall be made in writing and sent by certified mail to the party's last-known address; and,

015.02B Notice shall name the person, organization, corporation, or other legal entity which shall appear; shall state the time, date, and place of hearing; and shall be served on the party at least fifteen (15) calendar days prior to the date set for hearing.

015.03 Parties to a Hearing. The party to a hearing shall be the person or entity notified of impending denial, refusal of renewal, suspension or revocation.

015.04 Hearing Officer. The hearing shall be conducted by the Director or his or her designated hearing officer, who will, inter alia, open the proceedings; enter into the record the

notice of hearing; rule on the admissibility of exhibits, take appearances, act on pleadings not previously filed; hear evidence as provided for in 016 of these rules and regulations, rule on motions and objections, issue subpoenas, order briefs, cross-examine any witnesses and close the proceedings.

015.05 Continuances. Continuances may be granted at the discretion of the Director for good cause or on his or her own motion. A party may request a continuance by notifying the Department, in writing, at least five (5) days prior to the hearing, stating why the continuance is necessary.

015.06 Stay. The request for a formal hearing will automatically stay the revocation or suspension until a final order is entered by the Director.

015.07 Official Record. The Department shall prepare an official record in all formal hearings in the form of a tape recording by the Director or the designated hearing officer.

015.08 Decisions – Transmittal. The Director shall reduce his or her decision or order to writing and deliver that decision or order to the party requesting the hearing. Such delivery shall be by certified mail.

015.09 Representation by Counsel. The party and/or the Department may be represented at the hearing by counsel.

015.10 Revocation or Suspension – Effective Date. If the party fails to request a hearing, the revocation or suspension will become effective thirty (30) days from the date of the notice. If a hearing is requested, the revocation or suspension shall be automatically stayed until a hearing is held and an order entered thereon.

015.11 Summary Suspension. Notwithstanding the provisions of 015.10, the Department may summarily revoke or suspend the certificate of a Third-Party Tester provided that the Department finds that the public safety requires emergency action and incorporates its findings to that effect in its notice of suspension or revocation of certificate under 015.01. The party may request a hearing within thirty (30) calendar days of the date of notice. If so requested, the hearing shall be instituted within ten (10) calendar days of the rearrest, and the contest of the summary revocation or suspension shall be promptly determined.

015.12 Intervention. Any person(s) may intervene in a proceeding contesting the denial, refused renewal, suspension or revocation of a Third-Party Tester's or Third-Party Examiner's certification if a petition for intervention is filed in accordance with the Department's rules and regulations governing intervention, such intervention serves the interests of justice, and allowing intervention will not impair the prompt, orderly conduct of the proceeding.

016 EVIDENCE.

016.01 Evidence Admissible. Any evidence shall be deemed admissible in a hearing which would be admissible in civil proceedings under the laws of the State of Nebraska. In addition, the hearing officer may, within his or her discretion, admit evidence possessing probative value in any form commonly accepted by reasonably prudent persons in the conduct of their affairs.

016.02 Official Notice. The Director or designated hearing officer may take official notice of judicially cognizable fact or law in any proceeding.

016.03 Cross-Examination. In any proceeding, every party shall have the right to cross-examine witnesses who testify.

016.04 Late Exhibits. The Director or designated hearing officer may authorize any party to furnish and serve late filed exhibits within a specified time after the close of the hearing.

016.05 Witnesses. A party may provide evidence from witness with personal knowledge of the case. If a witness refuses to appear, a party may make a request for a subpoena. The appellant shall be responsible for the payment of witness fees and mileage, for any witness they subpoena, including the fees and expenses of expert witnesses the appellant calls.

017 HEARING DECISION.

017.01 Transmittal. The decision of the Director shall be sent certified mail, to the party of record or the party's representative.

017.02 Appeal. A party aggrieved by the final decision of the Director may appeal that decision in the manner provided for in the Administrative Procedure Act for contested cases.