

1-1-.13 Third Party Tester Program

(1) Minimum Requirements for Examiners

- (a) Must be trained and certified to conduct skills testing for CDLs by the Department
- (b) Must comply with the following:
 - (i) Must have a high school diploma or its equivalent
 - (ii) Must be a regular employee of the employer and recommended by the employer or must be a contracting Trainer/Examiner
 - (iii) Based on the results of a national criminal history background check, shall not be convicted of a felony or any other crime involving violence or a crime of moral turpitude, or a pattern of misdemeanors that evidences a disregard for the law unless they have received a pardon and can produce evidence of the same. For the purpose of this subsection, a plea of nolo contendere shall be considered a conviction.
 - (iv) Shall not have any suspension or disqualification within two (2) years prior to application
 - (v) Shall not have been enrolled or participated in a state approved Risk Reduction Program within the past ten (10) years
 - (vi) Must possess a CDL or be certified to administer CDL skills tests by the Department
 - (vii) Must successfully complete the Department's prescribed course in CDL classroom instruction and behind the wheel examination
 - 1) Must pass all relevant CDL knowledge and endorsement exams prior to attending the CDL Certification training class, depending on the class of vehicle they will be instructing
 - 2) Upon completion of specialized training in classes A, B, and C, the Examiner will be issued a certification card qualifying them to examine applicants for skills in license classes equal to their training certification. Examiner certification will be valid for four (4) years unless suspended, revoked or cancelled.
 - (viii) Must possess a valid certification card which shall be evidence of the Examiner's certification status
 - (ix) An Examiner whose certification has expired, cancelled, revoked or has been surrendered shall not administer any part of the CDL examination until completion of one (1) of the following:
 - 1) An Examiner with expired certification or who has surrendered their certification may apply for recertification within one (1) year of expiration or surrender date of the previously issued certification by performing a CDL examination to the satisfaction of the Department.
 - 2) If more than one (1) year has lapsed since expiration or surrender, the Examiner must successfully complete the Department's prescribed course in CDL classroom instruction and behind the wheel examination to become recertified.
 - (x) Must conduct skills tests examinations of at least ten (10) different CDL applicants per calendar year, and the first must be administered within the first six (6) months of becoming certified. Failure to do so will result in suspension from conducting further CDL tests.
 - (xi) Must successfully complete a refresher training course and examination every four (4) years to maintain CDL certification

(2) Minimum Requirements for Testers

- (a) Must be a Technical/Vocational School or Public School System, or an established business entity or organization that is licensed to do business in the State of Georgia and has been established to conduct business related to the commercial driver industry.

- (b) Must have a fleet of at least two (2) CMV's registered to the Tester
- (c) Must annually review and maintain the MVR of each Examiner to determine if the Examiner meets the minimum requirements of this rule.
- (d) Must enter into a CDL Third Party Tester Agreement with the Department
- (e) Must agree to have the Third Party Tester Program monitored by the Department and the FMCSA
 - (i) The skills test range/carousel and route used must pre-approved by the Department.
 - (ii) All Examiners must submit a testing schedule electronically to the Department using the method prescribed by the Department.
 - (iii) This schedule must be submitted at least ~~seven-five (57)~~ days in advance of the scheduled test.
 - (iv) A twenty-four (24)-hour notice must be given for cancellations or any changes to the schedule.
 - (v) Upon notification from the student of a test cancellation the Third-Party Examiner must immediately contact their assigned Department CDL Compliance Analyst by e-mail and update their schedule electronically with the Department.
 - (vi) The Compliance Analyst may approve changes in schedules as necessary.
 - (vii) Testing must be conducted according to the schedule approved by the Department.
 - (viii) Unapproved testing violates the agreement between the Tester and the Department.
 - (ix) The Third-Party Tester agrees to notify the Department thirty (30) days prior to any modifications to the skills course/carousel.
 - (x) The Department shall review and approve any modifications to the course/carousel.
- (f) Must ensure that all Examiners employed by the Tester are certified by the Department and that the Examiners comply with the Department rules and regulations, all applicable state and federal laws and have passed a nationwide criminal background check
- (g) Must provide a surety bond in the amount of \$10,000.00 (not applicable to state or governmental entities) per location
- (h) Shall maintain records, which shall be available for inspection by the Department during normal business hours. Normal business hours shall be between 8:30 a.m. and 4:30 p.m. daily. One (1) hour of flexibility in the time may be observed as long as the school is open eight (8) hours per day.

(3) Test Administration

- (a) Skills tests will be conducted strictly in accordance with procedures and guidelines utilized by the Department CDL Examiners. Such instruction may include information on skills test content, route selection/revision, test forms, Examiner procedures, and administration procedures and/or changes.
- (b) Skills tests shall be conducted:
 - (i) Only on test routes approved by the Department
 - (ii) In a vehicle representative of the class and type of vehicle for which the CDL applicant seeks to be certified and for which the Examiner is qualified to test
 - (iii) Using the Department approved content, forms, and scoring procedures
 - (iv) Only on approved days of the week during daylight hours ~~only~~
- (c) Only licensed drivers with approval from the Department may be tested.
- (d) Examiners shall not administer any part of a CDL test unless they ~~have a valid Department certification card~~ can provide proof of certification by the Department.
- (e) Must not test relatives (by blood or marriage) ~~or friends, or co-workers.~~ Co-workers may be tested with prior approval of the immediate supervisor.

- (f) Examiners are prohibited from administering a skills test to an applicant who was trained by that Examiner
- (4) Records to be maintained by ~~Examiner~~Tester:
- (a) Third Party Tester Record:
- (i) A copy of the Tester's certification with the Department and the signed, current Third Party Agreement
 - ~~(i)-(ii)~~ A copy of each Examiner's current DDS certification card along with a copy of their driver's license and the Third Party Agreement
 - ~~(ii)-(iii)~~ A copy of Examiner's MVR (by the anniversary of certification)
 - ~~(iii)-(iv)~~ Tester Certifications must be displayed on a wall within the school.
 - ~~(iv)-(v)~~ Tester must maintain these records on an Examiner for at least two (2) years after that Examiner is no longer employed by that Tester.
- (b) Third Party Examiner Record:
- (i) A copy of DS 1235 or DS 1235C (score sheet) on each applicant tested (passing or failing copies)
 - (ii) A copy of CLP and underlying driver's license
 - (iii) A signed copy of the CDL Skills Testing Information Agreement Form
 - (iv) Documentation that the applicant has completed Human Trafficking Awareness training
 - (v) Verification that the applicant has successfully completed ELDT
 - (vi) Must maintain these records for the previous two (2) years and for the current year
- (5) Notification Requirements
- (a) Testers must:
- (i) Notify the Department in writing thirty (30) days prior to any change in the Tester's or Tester Representative's name, address, and contact information.
 - (ii) Notify the Department in writing within ten (10) days of any change in:
 - 1) The Examiners who are employed by the Tester; and
 - 2) Any Examiner's driving status.
 - (iii) Notify the Department in writing within ten (10) days of any of the following occurrences:
 - 1) The Tester ceases to do business in Georgia.
 - 2) The Tester fails to comply with any of the Department's requirements.
 - 3) Examiner receives notice from the Department of any driver's license suspension, revocation, disqualification, cancellation or DUI conviction.
 - 4) Any Examiner fails to comply with any of the Department's requirements.
 - (iv) Request and obtain approval from the Department of any proposed changes in the skills test route(s).
- (b) The Examiner shall notify the Department within ten (10) days of leaving the employ of a Tester and return the DDS Examiner Certification Card.
- (c) Testers must Report to the Department:
- (i) A copy of skills test roster of applicants
 - (ii) A copy of test schedules
- (6) Denial/Suspension/Revocation/Cancellation of Third Party Testing Program Certification
- (a) The Department may deny or cancel any application for a Tester's or Examiner's certification or cancel certification if the applicant does not qualify for certification under these rules. Misstatements or misrepresentations in the application may be grounds for cancellation.
- (b) Any Tester or Examiner must immediately surrender their certification upon separation from the Tester. All forms, manuals, or supplies that the Department has furnished must also be surrendered immediately.

- (c) The Department may cancel the Third Party Testing Program provided for in these requirements in its entirety or may cancel it in part.
- (d) The Department may suspend or revoke a Tester's or Examiner's certification upon any of the following grounds:
 - (i) Failure to comply with or satisfy any of the provisions of these requirements, or the Third Party Tester agreement
 - (ii) Falsifying, altering, or misrepresenting any records or information relating to the Third Party Testing Program
 - (iii) Commission of any act which compromises the integrity of the Third Party Program
 - (iv) Failure to comply with FMCSA standards – allows a five (5) point maximum difference between Examiner scoring and Compliance Analyst scoring during monitoring event
 - (v) Failure to fully cooperate with the Compliance Analyst, including failure to provide the Compliance Analyst access to:
 - 1) All Third Party Tester Program and Examiner documents and records; and
 - 2) Any facility where testing is performed.
- (e) Suspension/Revocation and Appeal Procedures
 - (i) Upon determining that a Tester's or Examiner's certification should be suspended, revoked, or cancelled the Department shall notify the Tester or Examiner by in writing. If mailed, such notice shall be deemed received three (3) business days after mailing.
 - (ii) The notification shall notify the Tester or Examiner of the following:
 - 1) That the Tester or Examiner may, within ten (10) days of receipt of the notice, request a hearing. The request must be in writing and received by the Department within the period specified.
 - 2) That if the Department does not receive a written hearing request within the ten (10) day period:
 - a) The suspension, revocation, or cancellation will be effective upon the expiration of the ten (10) day period.
 - b) Any rights to an appeal and hearing shall be considered to have been waived; and
 - (iii) Upon receipt of a timely, written hearing request, the Department shall forward the request to the Office of State Administrative Hearings (OSAH).
 - (iv) The hearing and appeal procedures shall be as specified in Ga. Comp. R. & Regs. R. 375-1-1-.06.
 - (v) A Tester or Examiner who timely requests a hearing may continue to administer CDL testing pending issuance of a final decision by the Administrative Law Judge.
- (f) Reinstatement: A Tester or Examiner may apply for certification reinstatement at the end of a suspension period.
- (g) No current employee of the Department, or any spouse, dependent child, dependent stepchild, or dependent adopted child of such employee, shall be certified by the Department as a Third Party Tester or Examiner.

Authority: O.C.G.A. §§ 40-5-156, 40-16-5, 43-, 49 C.F.R. § 384.201, 49 C.F.R. § 390.9.

SYNOPSIS

STATEMENT OF PURPOSE AND MAIN FEATURES OF PROPOSED RULE

This amendment is part of the CDL Modernization project.

DIFFERENCE BETWEEN EXISTING AND PROPOSED RULE

The testing schedule submitted by Third Party Testers must be submitted at least five days in advance of the scheduled test, instead of seven days. Reference to the new score sheet, DS 1235C, is added.