

**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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**NEBRASKA ADMINISTRATIVE CODE**

**TITLE 247**

**CHAPTER 8**

**Nebraska Department of Motor Vehicles**

**APPROVAL DATE:**

**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 16, 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 Parts 383 and 384, Commercial Driver's License Standards; Requirements and Penalties, as amended, pursuant to Neb.Rev.Stat. § 60-462.01.

**001.02C** Title 53 NAC Chapter 4 of the Nebraska Department of Justice, Attorney General's Model Rules.

**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 vehicles.

**002.04 Class B heavy straight vehicle** 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 pursuant to Neb.Rev.Stat. § 75-364.

**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 CDL** means Commercial Driver's License as defined in § 60-480.

**002.09 CLP** means Commercial Learner's Permit as defined in § 60-480.

**002.10 Commercial motor vehicle or CMV** means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

**002.10A** has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more) inclusive of a towed unit or units with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds);

**002.10B** has a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 pounds or more);

**002.10C** is designed to transport 16 or more passengers, including the driver; or

**002.10D** is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Federal Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Federal Hazardous Material Regulations 49 CFR part 172, subpart F or 42 CFR part 73.

**002.11 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.

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

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

**002.14** Disqualification means the withdrawal of a CDL or CLP as provided in Neb. Rev. Stat. § 60-4,131 and also the withdrawal of a CDL or CLP by administrative action as provided in Neb. Rev. Stat. §§ 60-4,167.02 or 60-4,168 through 60-4,270.

**002.15** Driver training school means a business enterprise conducted by an individual, association, partnership, limited liability company, or corporation or a public or private educational facility which educates or trains persons to operate motor vehicles and which charges consideration or tuition for such service or materials.

**002.16** Driving a commercial motor vehicle while under the influence of alcohol means committing any one (1) or more of the following acts in a CMV: driving a CMV while the person's alcohol concentration is 0.04 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 in the enforcement of 49 CFR § 383.51 (b) or § 392.5 (a) (2).

**002.17** 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.

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

**002.19** Employee means any person who works a minimum of 30 hours per week from Monday through Sunday and is on the payroll of a Third-Party Tester, and excludes an independent contractor.

**002.20** Skills test means a test by a CLP holder applying for a CDL that is required to be successfully completed prior to the issuance of a CDL.

**002.21** Third Party Examiner means a person employed by a Third Party Tester who is authorized by the Department to administer CDL skills tests specified in 49 CFR Part 383 and pursuant to Neb.Rev.Stat. 60-4,158.

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

**002.23** Third-Party Tester means a person, including, but not limited to, another State, a motor carrier, a private driver training facility or other private institution, or a department, agency or instrumentality of a local government, authorized by the Department to employ skills test examiners to administer the CDL skills tests specified in 49 CFR Part 383 and pursuant to Neb.Rev.Stat. 60-4,158.

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

**002.25 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 a CDL.

**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 a person, including, but not limited to, another State, a motor carrier, a private driver training facility or other private institution, or a department, agency or instrumentality of a local government, authorized by the Department to employ skills test examiners to administer the CDL skills tests specified in 49 CFR Part 383 and pursuant to Neb.Rev.Stat. 60-4,158;

**003.02B** Ensure that each Third-Party Examiner who conducts the driving skills test is certified in accordance with 009 of these rules and regulations;

~~administers at a minimum six (6) skills test per year;~~

**003.02C** Third-Party Testers that are not government entities are required to initiate and maintain a \$25,000 bond to pay for re-testing drivers in the event that the third party tester or one or more of its examiners is involved in fraudulent activities related to conducting skills testing for applicants for a CDL;

**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;

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

**003.02F** Must only use Department certified Third-Party Examiners;

**003.02G** Require all Third-Party Examiners to have a nationwide criminal background check prior to certification; and,

**003.02H** Must require all Third-Party Examiners to attend a DMV-approved training course at a minimum of every four (4) years.

**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, ~~and~~ telephone number, and e-mail address of the individual who has been designated the applicant's contact person with the Department;

**003.03A3** The name, date of birth, driver's license number, email address, phone number and current home address of those full-time, payroll employees who are certified by the Department as Third-Party Examiners;

**003.03A4** The address of each Nebraska location 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 (not to exceed one (1) test route per Third-Party Examiner) that will be used for the on-road portion of the skills test;

**003.03A5** The name, date of birth, driver's license number, email address, phone number and current home address of those employees who desire certification by the Department as Third-Party Examiners; and,

**003.03A6** 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.

**003.03D Surety Bond.** If the Third-Party Tester is not a government entity, submit a \$25,000 bond to be sufficient to pay for re-testing drivers in the event that the Third-Party Tester or one or more of its examiners is involved in fraudulent activities related to conducting skills testing for applicants for a CDL.

**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.

**003.07 Term.** The certification to conduct third-party testing shall be valid for two (2) years.

**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** Fraud, forgery or misrepresentation in an application;

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

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

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

**004.01F** 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;

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

**004.01H** Lack of business stability;

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

**004.01J** Failure to provide the Department with the pass/fail results and scores of each applicant tested within three (3) days of the test date pursuant to 008.01B of these rules and regulations;

**004.01K** Failure of the skills test by a CDL driver previously tested by the Third-Party Examiner employed by the Third-Party Tester on a retest by the Department conducted pursuant to 007.05 of these rules and regulations;

**004.01L** Failure of the Third-Party Examiner to conduct skills test examinations, consisting of ten (10) pre-trip vehicle inspections, ten (10) basic control skills, and ten (10) road tests, of at least ten (10) different applicants per calendar year;

**004.01M** Failure to submit a schedule of CDL skills tests to the Department no later than two (2) business days prior to each test;

**004.01N** Failure to require all Third-Party Examiners to successfully complete a refresher training course and examination every four (4) years to maintain their CDL test examiner certification;

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

**004.01P** Failure of Third-Party Examiners to pass a nationwide criminal background check. The Department will deny any applicant whose record contains a felony conviction or any convictions involving fraudulent activities within the last ten (10) years;

**004.01Q** Have had no violations noted on the Third-Party Examiners' driving record for which five (5) or more points might be assessed. Additionally, the Third-Party Examiner must have no disqualifications, suspensions or revocations on his or her driving record within the last five (5) years; and,

**004.01R** Third-Party Examiners have had no convictions for driving while under the influence of alcohol or drug offense in connection with motor vehicle use within the previous five (5) years.

**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 the following records at its principal place of business as follows:

007.01A A copy of the Department certificate authorizing the Third-Party Tester to administer a CDL skills testing program for the classes and types of commercial motor vehicles listed;

007.01B A copy of the current Third-Party Tester agreement with the Department;

007.01C A copy of the Third-Party Tester's Department approved road test routes.

**007.01D 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:

**007.01D1** A valid "Examiner Identification Card" (including name, residential address, and social security number) indicating that the Examiner has been certified by the Department;

**007.01D2** A copy of the Third-Party Examiner's current driving record, which must be updated annually;

**007.01D3** Evidence that the Third-Party Examiner is an employee of the Third-Party Tester; and,

**007.01D4** A copy of the Third-Party Examiner's training record as outlined in 383.75.

**007.01E 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 the current year plus the

two (2) previous calendar years from the date of the test and shall include:

**007.01E1** The complete full name and address of the driver;

**007.01E2** The driver's license number and the name of the state or jurisdiction that issued the CLP held by the driver at the time of the test;

**007.01E3** The test score sheet(s) showing the type of vehicle tested for and the results of the skills test;

**007.01E4** The name and identification number of the Third-Party Examiner conducting the skills test;

**007.01E5** The license plate number of the commercial motor vehicle(s) used to conduct the testing, what type of braking system the vehicle had, transmission type and coupling system, if appropriate; and

**007.01E6** A copy of the signed Notification of Driving Skills Examination form.

**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 of the following:

**007.02A** The Department will conduct audits overtly and covertly at least every two (2) years to focus on extremely high or low pass rates for Third-Party Testers granted the training and skills testing exception under 49 CFR 383.75 (a)(7).

**007.02B On-Site Inspections.** At least once every two (2) years, the Department will conduct on-site inspections of Third-Party Testers.

**007.02C Observe Testing.** At least once every two (2) years, 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 Tester to compare pass/fail results.

**007.02D Sample Retests.** The Department may retest a sample of CDL holders who were examined by the Third-Party Tester as follows:

**007.02D1** The drivers to be retested 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. Sample drivers will be notified of the retesting by the Department by mail at least three (3) weeks prior to the retesting date. If the retesting date is not convenient for the sample driver, 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;

**007.02D2** It shall be the responsibility of the Third-Party Tester to provide the appropriate vehicle for these retests;

**007.02D3** Simple failure of the sample retest conducted by the Department representative shall not prejudice a CDL already issued to that driver; and,

**007.02D4** If the driver fails the retest, the auditor may require that the driver be recalled and reexamined at a Department CDL driver licensing location. Failure of the skills retest 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.

**007.03** A Third-Party Examiner for a Third-Party Tester that is also a Driver Training School is prohibited from administering skills tests to an applicant who was skills-trained by that Third-Party Examiner.

**007.04** The Department will prepare a written review of the results of each inspection and audit and a copy 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 by secure electronic means:

**008.01A** Provide the Department with a two day advance notice of skills test appointments scheduled pursuant to these rules and regulations;

**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 three (3) days of the date of testing;

**008.01C** Any change in the Third-Party Tester's name, legal status or address 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 an employee of a Third-Party Tester requesting initial certification or renewal of certification as a Third-Party Examiner;

**009.02C** Have had no violations noted on his or her driving record for which five (5) or more points might be assessed. Additionally, the Third-Party Examiner must have no disqualifications, suspensions, or revocations on his or her driving record within the last five (5) years;

**009.02D** Have had no convictions for driving while under the influence of alcohol or drug offense in connection with motor vehicle use within the previous five (5) years;

**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;

**009.02G** Have a high school diploma or its equivalent;

**009.02H** Agree to conduct skills test examinations, consisting of ten (10) pre-trip vehicle inspections, ten (10) basic control skills, and ten (10) road tests, of at least ten (10) different applicants per calendar year or, at the discretion of the Department, must either take the refresher training specified in 49 CFR 384.228 or have a State examiner ride along to observe the third party examiner fully administer at least one skills test;

**009.02I** Provide the Department with a two day advance notice of skills test appointments scheduled pursuant to 008.01A of these rules and regulations;

**009.02J** Provide the Department with the pass/fail results and scores of each applicant tested within three (3) days of the test date pursuant to 008.01B of these rules

and regulations;

**009.02K** Must attend a training course and examination at a minimum of every four (4) years; and,

**009.02L** Must pass a nationwide criminal background check. The Department will deny any applicant whose record contains a felony conviction or any convictions involving fraudulent activities within the last ten (10) years.

**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, , and include as a minimum, the following:

**009.03A1** The individual's name, title, current home address, telephone number, email address, date of birth, 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,

**009.04 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. Once certified, the Third-Party Examiner must display the certificate prominently in the office of the Third-Party Tester. The certification to conduct Third-Party Testing shall be valid for two (2) years.

**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** Fraud, forgery or misrepresentation in an application;

**011.01C** Failure to provide the Department with a two day advance notice of skills test appointments scheduled pursuant to 008.01A of these rules and regulations;

**011.01D** Failure to provide the Department with the pass/fail results and scores of each applicant tested within three (3) days of the test date pursuant to 008.01B of these rules and regulations;

**011.01E** 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;

**011.01F** During the prior five (5) years, the Third-Party Examiner must have no violations noted on his or her driving record for which five (5) or more points might be assessed. Additionally, the Third-Party Examiner must have no disqualifications, suspensions or revocations on his or her driving record within the last five (5) years,

**011.01G** Have had no convictions for driving while under the influence of alcohol or drug offense in connection with motor vehicle use within the previous five (5) years;

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

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

**011.01J** Failure to complete training review courses or additional training as required by the Department;

**011.01K** Failure to conduct skills test examinations, consisting of ten (10) pre-trip vehicle inspections, ten (10) basic control skills, and ten (10) road tests, of at least ten



(10) different applicants per calendar year;

**011.01L** Failure to attend a refresher training course and examination at a minimum of every four (4) years;

**011.01M** Failure to pass a nationwide criminal background check. The Department will deny any applicant whose record contains a felony conviction or any convictions involving fraudulent activities within the last ten (10) years; and,

**011.01N** Any other cause adversely reflecting on the Third-Party Examiner's fitness or capacity to administer skills testing.

**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.** Must attend a refresher training course and pass examinations, as determined by the Department, at a minimum of every four (4) years.

**012.03 Notification.** The Department shall notify Third-Party Examiners of any retraining or additional training requirements in writing or by e-mail to the last known address or e-mail 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 013.05 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 examinations 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, adequately, and safely, 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.

**013.01E3** A computer lab to administer all written examinations proctored by an employee of the sponsor.

**013.01F** All training sites must be approved by the Department 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 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 including all final test segment scores; and,

**013.02D** The class(es) of vehicle(s) 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 by secure electronic means 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 vehicle(s) 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 APPEAL.**

**015.01 Hearing.** Upon suspension, revocation, cancellation or denial of the issuance of a certificate for a Third-Party Tester or Third-Party Examiner, the Director shall notify in writing and, upon written request, shall afford the Third-Party Tester or Third-Party Examiner a hearing.

**015.02 Stay.** Upon receipt of a written request, and upon good showing by the Third-Party Tester or Third-Party Examiner, the Director may stay the administrative order pending an administrative hearing on the matter.

**015.03 Administrative Procedure Act.** Any action taken by the Department to cancel, suspend, revoke or refuse to issue or renew a certification for a Third-Party Tester or Third-Party Examiner shall comply with the Administrative Procedure Act.

**015.04 Adoption of Attorney General's Model Rules.** All hearings will be held in conformance with Title 53 Nebraska Administrative Code, Chapter 4 of the Nebraska

Department of Justice, also known as the Attorney General's Model Rules, incorporated herein by reference and attached to these regulations.