

DEPARTMENT OF TRANSPORTATION

DIVISION OF MOTOR VEHICLES

Driver Services

Statutory Authority: 21 Delaware Code, Sections 302, 304, 2608(a), and 2608(d) (21 Del.C. §§302, 304, 2608(a), & 2608(d))

FINAL

ORDER

2226 Third Party Commercial Driver License Skills Testing

Pursuant to the authority provided by 21 Del. C. §302, 21 Del. C. §304, and 21 Del. C. §2608(a), 21 Del. C. §2608(d), 11 Del. C., and 49 CFR Parts 383-384, the Delaware Division of Motor Vehicles (DMV) promulgates this regulation establishing its Third Party Commercial Driver License Skills Testing program.

Findings of Fact and Conclusions of Law

1. The public was given notice and the opportunity to provide comments in writing concerning the proposed regulation.
2. The proposed regulations are useful and proper, and the Department believes that the adoption of these regulations is appropriate.

Decision and Effective Date

Based on the provision of Delaware law and the record of this docket, I hereby adopt the Third Party Commercial Driver License Skills Testing program as set forth in the version attached, to be effective September 11, 2023.

It is ordered on this 14 day of August, 2023.

Nicole Majeski, Secretary
Delaware Department of Transportation

2226 Third Party Commercial Driver License Skills Testing

1.0 Authority

The authority to promulgate this regulation is 21 Del.C. §302, 21 Del.C. §304, 21 Del.C. §2608(a); 21 Del.C. §2608(d); Chapter 11 of the Delaware Code; and the Code of Federal Regulations (CFR) Title 49 Volume 5, Chapter III (Federal Motor Carrier Administration, Department of Transportation) Parts 383 and 384.

2.0 Purpose

The purpose of this regulation is to establish the policies, procedures, operational instructions, and requirements for third-party certified commercial driver license examiners to administer commercial driver license skills tests. The Secretary of the Department of Transportation or designee shall have the authority to administer these Rules and Regulations and shall be solely responsible for making the determinations required in this regulation.

3.0 Definitions

The following words and terms, when used in this regulation, shall have the following meaning:

"Agreement" means the total, recorded obligation between two parties. An agreement exists between State of Delaware agencies in the form of a Memorandum of Agreement or Memorandum of Understanding. An agreement between a private entity and a State agency, or between private entities, is additionally considered to be a Contract.

"Behind the wheel" or "BTW" means the part of the skills exam that takes place during the time the license applicant is seated in the driver position and controlling the vehicle's direction, speed, and other controls. This term is used as an adjective for logging and reporting information.

"Commercial Driver's License" or "CDL" means a license issued in accordance with the requirements of 21 Del.C. Ch. 26 to an individual which authorizes that individual to drive a certain class of commercial motor vehicle.

"Commercial Learner's Permit" means a driving credential issued by Delaware Division of Motor Vehicles pursuant to 21 **Del.C. §2608(d)** to allow an individual to drive a commercial motor vehicle but only with another Commercial Driver Licensed driver.

"Commercial motor vehicle" or "CMV" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers (including school buses) or property if the motor vehicle has a gross combination weight rating of 26,001 pounds or more inclusive of towed unit or units with a gross vehicle weight rating (GVWR) of more than 10,000 pounds; has a GVWR of 26,001 pounds or more; is designed to transport 16 or more passengers, including the driver; or is of any size and is used in the transportation of hazardous materials.

"Contract" means the total obligation with a private entity creating mutual assent enforceable by law. The content of assent will address mutual acceptance, adequate consideration, capacity, and legality.

"Division" means Delaware Department of Transportation, Division of Motor Vehicles.

"Federal criminal background check" means the acquisition of federal criminal history record information for an individual, executed in accordance with 11 **Del.C. §8527** with Delaware Department of Transportation, Division of Motor Vehicles as the recipient agency.

"FMCSA" means the Federal Motor Carrier Safety Administration.

"Franchised" means an organization that has been granted a right or license to market a company's services in Delaware.

"Shadow drive" means additional practice in driver testing between the skills examiner's initial certification and the skills examiner's initial, unaccompanied applicant test. The shadow drive is accompanied by another, already-certified skills examiner.

"Skills Road Exam" or "SRE" means the three-part road test skills exam conducted in a manner approved by the Delaware Division of Motor Vehicles and as specified in 49 CFR §383.110-.135.

"State agency" means any office, department, board, commission, committee, court, school district, board of education, and all public bodies existing by virtue of an act of the General Assembly or of the Constitution of the State of Delaware, excepting only political subdivisions of the State, their agencies and other public agencies not specifically included in this definition which exist by virtue of state law, and whose jurisdiction is limited to a political subdivision of the State or to a portion thereof or extends beyond the boundaries of the State.

"Test pad" or "testing site" means a designated area included as part of the physical facilities where the skills examination is performed. It must consist of a paved, level surface suitable for heavy vehicles to move around safely.

"Third party skills test examiner" or "ST" means an individual employed by an approved third party testing organization who has met all the Delaware Division of Motor Vehicles requirements, has successfully met the third party testing organization training requirements per 49 CFR §384.228, and is certified to administer the SRE.

"Third party testing organization" or "TPTO" means an organization licensed by the Delaware Division of Motor Vehicles to employ skills test examiners to administer the SRE as specified in 49 CFR §383.110-.135 for a Commercial Driver License.

4.0 TPTO Applications

4.1 No corporation, partnership, proprietorship, or any other legal entity shall carry on or perform the business of conducting skills test exams unless issued a TPTO license.

4.2 Applications for licensure shall be made on forms furnished by the Division and filled out completely for consideration.

4.3 The owner of a TPTO must have been issued a Delaware driver's license and established residency in Delaware before the time of the application. State agencies and franchised TPTOs are exempt from this requirement.

4.4 The owner of a TPTO must submit for review a State of Delaware criminal background check. State agencies are exempt from this requirement.

4.5 Applications must include:

4.5.1 The name and address of the TPTO. The place of business must be a separate brick and mortar establishment and not part of a residence, mail drop, or office sharing facility. A post office box may be used as a mailing address only;

4.5.2 A copy of the TPTOs Delaware business license. State of Delaware Agencies are exempt from this requirement;

- 4.5.3 A list all employees and subcontractors for ST training and certification, to include STs and any individuals who will access the computerized systems for test scheduling and recording test results;
- 4.5.4 A record management plan for the storage, safeguarding, destruction, retention, and placement of the TPTO's records;
- 4.5.5 A breakdown of the costs of each package offered by the TPTO;
- 4.5.6 A list of all locations of branch offices, which must meet all the same physical requirements listed in Section 6.0 of this regulation;
- 4.5.7 A testing site which meets design requirements identified in Section 10.0 of this regulation;
- 4.5.8 A test pad maintenance plan to address the prevention of functional pavement deterioration, skidding, ponding, snow removal, and surface treatment;
- 4.5.9 Documentation satisfying all local zoning requirements allowing TPTO as an approved use;
- 4.5.10 A copy of a rental or lease agreement indicating a TPTO is permitted if an applicant does not own the property; and
- 4.5.11 Proposed road test routes for approval, which must comprise of:
 - 4.5.11.1 Various turns and maneuvers based upon Division standards, which will be provided during the application process;
 - 4.5.11.2 Two routes and one modified route, per each testing location;
 - 4.5.11.3 The routes must begin from an approved location; and
 - 4.5.11.4 Routes and skills testing shall occur wholly within the State of Delaware, at the TPTO's testing sites, and approved road test routes.

4.6 Fees

- 4.6.1 Each original application for a TPTO license must be accompanied by an application fee of \$500, which includes training and certification of STs by the Division. State agencies are exempt from this requirement.
- 4.6.2 Each application for renewal of an existing TPTO license must be accompanied by a renewal application fee of \$250.
- 4.6.3 No license or license renewal fees shall be refunded if the license is denied, suspended, revoked, or refused renewal.

5.0 TPTO Licenses

- 5.1 Upon approval, the TPTO and the Division shall enter into a written agreement which satisfies the requirements of 49 CFR §383.75(a)(8). The template for the TPTO agreement is contained on the Division website. State agencies will satisfy this requirement with a Memorandum of Understanding with the Division.
- 5.2 Licenses and contracts with the Division are non-transferable.
 - 5.2.1 A TPTO shall immediately notify the Division in writing of any changes in ownership unless they are a State agency.
 - 5.2.2 In all instances where new individuals become owners who were not listed on the license or prior application, a new application must be submitted per Section 4.0 and approved by the Division.
 - 5.2.3 Changes in ownership where one owner transfers a portion or all of the individual's ownership interest to another owner previously identified on the license application does not require a new license application.
- 5.3 All licenses issued under the provisions in this regulation will expire on the last day of December every 2 years following their issuance.
- 5.4 Licenses may be renewed up to 60 days before the expiration date.
- 5.5 Renewal applications shall be made on forms furnished by the Division, filled out completely for consideration and must include:
 - 5.5.1 A copy of the TPTO's Delaware business license. State of Delaware agencies are exempt from this requirement;
 - 5.5.2 A list of all employees and subcontractors in their employ, to include STs and any individuals who will access the computerized systems for test scheduling and recording test results; and
 - 5.5.3 Documentation demonstrating SREs for a minimum of 50 applicants under their current license.
- 5.6 Renewal applications not completed and received by the expiration date of the current license will not be accepted and the TPTO license will not be renewed. The TPTO will then be required to apply as a new licensee and satisfy all requirements applicable to new licensees.

6.0 Physical Facilities

- 6.1 Each TPTO requesting a license must have a place of business with adequate facilities to conduct testing and maintain all required files and records. Any branch locations must also comply with all requirements as outlined in this regulation.
- 6.2 The TPTO is required to submit to an initial facility site inspection before approval and is subject to subsequent inspections.
- 6.3 The facility must include at least the following:
 - 6.3.1 A telephone installed at the location;
 - 6.3.2 Files and records in a secure cabinet or storage location;
 - 6.3.3 A regulation sized test pad associated with a location which has been issued a DeIDOT Entrance Permit;
 - 6.3.4 A sign on the premises measuring at least 24 inches by 32 inches that lists the name of the business;
 - 6.3.5 A waiting or reception area for check-in before the exam;
 - 6.3.6 Restroom facilities;
 - 6.3.7 Conspicuously posted and maintained Division of Revenue Business license;
 - 6.3.8 Conspicuously posted hours of operation and availability during these hours;
 - 6.3.9 Conspicuously posted Division TPTO license; and
 - 6.3.10 At least one contact person who is an employee or principal of the TPTO, up to date and on file with the Division, who maintains the TPTO's physical and mailing addresses, contact phone numbers, emails.
- 6.4 A TPTO shall immediately notify the Division in writing of any proposed change of location or closures of the primary or branch office location of the business before the change or closure.
 - 6.4.1 For a change of location, a new application must be submitted to be processed per Section 4.0 and approved in writing by the Division. The TPTO may continue to provide skills exam services under its previous license until time the new application is approved or denied by the Division.
 - 6.4.2 The TPTO must notify the Division a minimum of 30 days before any primary or branch office closures. The notice must include the names of all employees and subcontractors to be deleted from the TPTO's license, and the date the primary or branch office will close.

7.0 Skills Tester Requirements

- 7.1 The Division will determine the frequency, locations, means of delivery, and class size for training and certifying STs for the Delaware Commercial Examiner Certification Training Course based upon their analysis of the existing training demand and the availability of resources.
- 7.2 Each ST seeking training and certification must:
 - 7.2.1 Be at least 21 years of age with 1 year of valid driving authority;
 - 7.2.2 Provide a certified driving record showing the ST's driver license has not been suspended, revoked, or disqualified for moving violations within the previous 5 years. If the ST candidate is a Delaware resident, the driving requirement can be satisfied if the candidate provides the Division permission to review their Delaware driving record;
 - 7.2.3 Have had the applicable or like CDL endorsement for at least one year for the class of skills exam they will be testers for;
 - 7.2.4 Complete and pass a federal criminal background check per 49 CFR §384.228(g);
 - 7.2.5 Complete and pass a State of Delaware criminal background check;
 - 7.2.6 Provide a valid Medical Examiner Certificate (MEC) certifying they can safely operate a commercial motor vehicle;
 - 7.2.7 Pass the Delaware Commercial Examiner Certification Training course per 49 CFR § 384.228. Details regarding the course will be provided to the TPTO upon approval;
 - 7.2.8 Provide documentation of 4 shadow drives on each route the ST will be using for SREs.
 - 7.2.8.1 All drives must not contain more than 3 errors as documented by another certified tester.
 - 7.2.8.2 All drives must be completed within 6 weeks of ST certification date; and
 - 7.2.9 Successfully complete the Delaware Commercial Examiner Certification Training Course, at which time the TPTO and STs will be certified per 49 CFR §384.228(b) and 49 CFR §384.228(e).
- 7.3 An ST performing exams for a TPTO must be actively employed at the time the exam is performed.
- 7.4 An ST must administer a minimum of 25 SREs per year. Failure to complete the minimum may result in the suspension of an ST's certification.

- 7.5 An ST cannot administer any SRE to a member of their immediate family. Immediate family means parent (step), spouse, sibling (step), grandparent, child (step), significant other, in-law, aunt, uncle, niece, nephew, first cousin or anyone residing within the same household.
- 7.6 A TPTO must notify the Division in writing within 48 hours of an ST's change of driving status or departure from the TPTO.
- 7.7 A TPTO's hiring process for STs must include the requirements of 49 CFR §384.228(h).
- 7.8 An ST must be employed by the TPTO to which they are registered with the exception of State of Delaware agencies.
- 7.9 An ST may be employed by more than one TPTO, but shall be issued a separate certification number for each TPTO employing the ST.
- 7.10 An ST certification is valid only while the tester is employed by the TPTO listed on the certificate.
- 7.11 An ST shall maintain a valid Delaware CDL that has not been previously suspended, revoked, forfeited, or denied for a moving violation.
- 7.12 An ST must ensure that testing forms are complete and accurate.
- 7.13 The Division reserves the right to require any ST to be retrained for any reason.
- 7.14 An ST working on behalf of a State Agency may be considered a subcontractor under an active contract with that State agency.
- 7.15 A TPTO may request the certification of any employee or subcontractor be canceled by notifying the Division in writing.
 - 7.15.1 The cancellation of a certification does not nullify any of the terms of the Contract between the TPTO and the Division.
 - 7.15.2 Cancellation requests can only be submitted by the owner or authorized agent.
- 7.16 An ST may be evaluated either during an actual SRE or an SRE with a Division representative as the driver during an audit. ST's must follow Division procedures, meet Division standards, and must pass the evaluation with a minimum score of 80%. Failure to pass the evaluation may be reason for the Division to require additional continuing education of the ST.
- 7.17 A skills test examiner who is also a skills instructor either as a part of a school, training program, or otherwise is prohibited from administering a skills test to an applicant who received skills training by that skills test examiner. A skills test examiner must comply with the requirements and limitations imposed by 49 CFR 383.75(a)(7).

8.0 Operational Requirements

- 8.1 TPTOs must comply with current Delaware Code, Administrative Code, Federal regulations, and Division policies, procedures, and standards relating to TPTOs, STs, and SREs.
- 8.2 The TPTO is responsible for monitoring and ensuring their ST employees, subcontractors, and any other employees and subcontractors who access the computerized systems for entering test scores and schedules comply with these requirements.
- 8.3 TPTOs must ensure that all their STs maintain the training and qualification standards required to conduct SREs.
- 8.4 A TPTO must notify the Division in writing within 48 hours of an ST's change of driving status or departure from the TPTO.
- 8.5 A TPTO may provide general information to CDL applicants regarding documentation required by the Division for the issuance of CLP's or CDL's, however, a TPTO may not act as a liaison between the applicant and the Division.
- 8.6 A TPTO must refer skills exam applicants to a Division office for an SRE if:
 - 8.6.1 An applicant is requesting a required skills test upon completion of a rehabilitation program;
 - 8.6.2 An applicant is requesting a skills test after having failed 5 previous road exams; or
 - 8.6.3 An applicant is unable to produce a valid driver license and commercial learner's permit.
- 8.7 TPTO employees or subcontractors who are STs or have access to the computerized systems for entering test scores and schedules must submit to a State criminal background check.
- 8.8 A TPTO must provide ST Trainers as part of the Division's Train the Trainer requirements who are employed by the TPTO and are certified STs trained as Skills Testers by the Division.
- 8.9 TPTOs are permitted to use ST Trainers from other TPTOs to certify or recertify their STs, but not to certify another ST Trainer.

8.10 Only a candidate who has successfully completed the Division's ST training course requirements can be certified as an ST Trainer.

9.0 Recordkeeping and Reporting

9.1 All requirements of 49 CFR §383 and 49 CFR §384 apply.

9.2 TPTOs must use only the forms provided by the Division and must account for all required information, including control numbered forms issued to the TPTO.

9.3 The Division will not accept forms that show evidence of alteration. Forms containing an alteration will be voided and a new form must be provided.

9.4 Records shall be comprised of paper or electronic copies for the current year and the 2 previous calendar years and must include at least the following:

9.4.1 The TPTO license granted by the Division;

9.4.2 Certifications of all STs in the TPTO's employ;

9.4.3 The contract between the Division and the TPTO;

9.4.4 A copy of each completed CDL skills test scoring sheet;

9.4.5 A copy of the TPTO's Division approved road test routes;

9.4.6 A copy of each ST's training and continuing education record;

9.4.7 BTW logs;

9.4.8 Control numbered forms issued by the Division; and

9.4.9 CDL scoring sheets.

9.5 All forms and records must be kept in locked and limited access areas or secured electronically.

9.6 All forms, including any for passed or failed examinations, must be logged on a TPTO's report via the Division's electronic application or other means determined by the Division.

9.7 All voided control numbered forms should be filed in numeric or alphabetical order with a note stating why the document was voided and the number of the replacement form. All replacement forms for SREs must be dated using the same date as the original form.

9.8 TPTOs may be required to submit monthly reports at the Division's discretion.

9.9 If monthly reports are required of the TPTO, reports must be submitted electronically to the Division by the 10th business day of each month for the previous month's activity, even if there was no activity.

9.10 If monthly reports are required, the reports are to reflect all applicant testing activity and must include the following:

9.10.1 Monthly ST training student schedules;

9.10.2 ST training class completion statements;

9.10.3 BTW completion statements;

9.10.4 SRE completion statements; and

9.10.5 A summary of any control number forms voided during the reporting period.

9.11 Incomplete monthly reports will not be accepted. Any TPTO required to submit monthly reports who fails to file the report as required may be subject to discipline up to and including revocation of their license.

9.12 TPTOs and STs are responsible for securing both blank and completed forms.

9.13 Post-dating, pre-dating, or the partial completion of any form is not allowed except as described in subsection 9.7 of this regulation.

10.0 Test Sites and Routes

10.1 Testing sites must be a minimum of 240 feet by 110 feet in size, unless otherwise approved by the Division.

10.2 Access to testing sites must be able to be restricted or limited to prevent interference with testing and to avoid any possible motor vehicle or pedestrian contact to ensure the safety of the ST, driver, and the public.

10.3 Facilities that fail to maintain the testing site, pad, or access may result in application denial, renewal application denial, suspension, or revocation of their license.

10.4 The TPTO shall regularly conduct testing at an approved testing site. A testing site is presumed to be regularly used if an organization conducts at least one test per week at the site.

10.5 STs must use all approved routes regularly.

10.6 The TPTO shall notify the Division of changes in any conditions on testing routes, including:

10.6.1 Changes of traffic conditions;

- 10.6.2 Changes of patterns including increases in pedestrian or vehicle traffic;
 - 10.6.3 Deterioration of the pavement or other surface that could affect the outcome of a basic control skills test;
 - 10.6.4 Road construction; or
 - 10.6.5 New traffic signs or signals.
- 10.7 Road test banking, or the practice of allowing portions of the Commercial Driver License Skills Road Exam that a student has passed to not be subjected to re-testing, is never permitted. This situation arises when a Commercial Driver License applicant fails one of the three parts of the test and then subsequently retests only the failed part towards passing the entire Skills Road Exam. is never permitted.

11.0 Skills Exam Road Test

- 11.1 The TPTO shall ensure each test is administered in strict accordance with the methods and criteria identified by the Division and in accordance with State and Federal statutes, rules, contracts, TPTO standards, and all requirements of 49 CFR §383.75(a).
- 11.2 The TPTO shall use an electronic scheduling application deemed appropriate by the Division to schedule applicant skills exams.
- 11.3 TPTOs can score the skills test using paper sheets or by using an electronic system approved by the Division. If using the electronic system:
 - 11.3.1 The TPTO will need to establish a separate contract with the Division vendor; and
 - 11.3.2 Will not be required to maintain score sheets.
- 11.4 If paper scoring is used, the TPTO shall enter SRE scores into the computer applications approved by the Division as an electronic record per 49 CFR §383.75(b).
 - 11.4.1 SRE scores must be entered into the computer application within 5 business days of the CDL applicant's SRE completion.
 - 11.4.2 The TPTO shall also use and retain paper exam score sheets approved by the Division for the current year and the previous 2 calendar years. These score sheets shall be used during the SREs to provide detailed scoring that is the basis of summary scoring entered into the electronic application.
- 11.5 All tests must be completed in their entirety and recorded on forms or devices approved by the Division.
- 11.6 Testing sites must remain free of traffic, parked vehicles, pedestrians, and hazards during basic control skills testing.
- 11.7 Only one ST can test an applicant for each SRE.
- 11.8 Suspended STs are not permitted to test applicants.
- 11.9 An ST must not administer more than 1 complete SRE per day to the same applicant.
- 11.10 An ST shall test no more than 1 applicant at a time.
- 11.11 SREs shall only be administered during daylight hours.
- 11.12 Before administering any exam, STs must:
 - 11.12.1 Ensure applicants have a valid driver license and Commercial Learners Permit issued over 14 days prior in their immediate possession; and
 - 11.12.2 Complete the information section of either the CDL Skills score sheet or electronic tablet including the date of the test, the name of the applicant, the vehicle tag number, the vehicle identification number (VIN), the organization, and the tester information.
 - 11.12.3 Enter the start time on either the score sheet or electronic tablet after the instructions have been read.
- 11.13 An ST shall inspect the vehicle to be used for testing to ensure the following:
 - 11.13.1 The vehicle is properly registered and insured, that both the registration card and insurance card are inside the vehicle, and the documents match the vehicle identification number for the vehicle being used;
 - 11.13.2 The vehicle has the valid tag plate or plates attached to either the outside of the vehicle, trailer, or both, and any temporary tags must be visibly affixed to either the back of the vehicle or trailer;
 - 11.13.3 The vehicle has passed a safety inspection by the ST to ensure all necessary equipment is in safe operating order, and the vehicle meets all applicable state statutes for operation on a public roadway;
 - 11.13.4 The vehicle has been inspected for compliance with this subsection before every SRE, regardless of who owns the vehicle; and
 - 11.13.5 The vehicle is either registered to the TPTO or is a vehicle provided by the applicant.
- 11.14 Applicants and testers are prohibited from smoking, drinking, or eating during an SRE.
- 11.15 All personal electronic devices, including cell phones, tablets, and similar devices not used as part of the actual testing process must be turned off during the exam.

- 11.16 No passengers, pets, or interpreters may be in a vehicle during an SRE. Occupants in a vehicle during a road exam are limited to the applicant and the ST, with the following exceptions:
 - 11.16.1 A Division representative when an audit is being performed per section 12.0;
 - 11.16.2 An additional, certified ST to satisfy shadow drive requirements. Notification must be made to the Division and applicant before the SRE; or
 - 11.16.3 Service dogs, meaning dogs that are individually trained and certified to do work or perform tasks for people with disabilities. Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals in the context of this regulation.
- 11.17 STs must critique the applicant's performance throughout the course of the exam.
- 11.18 STs must note any deviations from the approved route during the Skills Test on either the CDL Skills Test Score Sheet or the electronic tablet.
- 11.19 STs must note all failures on either the applicant's CDL Skills Test Score Sheet or electronic tablet and electronically submit a failed score sheet to the Division within 24 hours of the exam.
- 11.20 The applicant's score and finish time must be recorded on the score sheet once the vehicle used for testing has been secured at the conclusion of the test.
- 11.21 Only STs can submit the CDL Skills Test Score Sheet via an electronic means deemed appropriate by the Division. The test data will remain valid for 1 year from the date of completion.
- 11.22 Upon successful completion of either a skills exam, a road exam, or both, ST's must complete either the CDL Skills Test Score Sheet or electronic completion statement. The tester and applicant must sign the form.
- 11.23 A ST's signature on either a CDL Skills Test Score Sheet or electronic tablet constitutes a representation by the ST that the actual applicant whose name is on the score sheet took the exam.
- 11.24 Recertification of STs is due by the third anniversary of the ST's certification or recertification dates. STs seeking recertification must:
 - 11.24.1 Provide a certified driving record showing the ST's driver license has not been suspended, revoked, or disqualified for moving violations within the previous 5 years. If the ST candidate is a Delaware resident, the driving record requirement can be satisfied if the candidate provides the Division permission to review their Delaware driving record; and
 - 11.24.2 Attend at least 1 continuing education or refresher class for updated testing practices every 3 years as part of the recertification process.

12.0 Auditing

- 12.1 Auditing and monitoring shall be performed by Division personnel in accordance with 49 CFR §384.229.
- 12.2 A Division representative will conduct on-site compliance inspections without notice as often as the Division deems necessary and at the minimum frequency as specified in 49 CFR §383.75(a) to ensure TPTOs continue to meet the standards established by the Division. During an on-site compliance inspection, the Division will review all required documentation and equipment, including:
 - 12.2.1 Student completion statements and skills or road exam records;
 - 12.2.2 Vehicles, to include inspection and review of vehicle records;
 - 12.2.3 Contracts;
 - 12.2.4 ST training student enrollment records;
 - 12.2.5 ST training student completion records;
 - 12.2.6 ST training classroom facilities;
 - 12.2.7 Testing records; and
 - 12.2.8 Monthly reports outlining the supporting data, advertising, and skills and road test exam information.
- 12.3 The Division reserves the right to retest any student or applicant if an audit indicates the test was not administered properly or did not meet Division's standards.
- 12.4 Audits may be conducted at the TPTO's office, the Division's office, or at another location as determined by the Division.
- 12.5 TPTO records must be accessible during normal business hours and made available to a Division or FMCSA representative upon request.
- 12.6 Records will be checked for accuracy and completeness, such as missing, voided, or altered records.
- 12.7 During Division compliance audits, TPTOs must cooperate with both the Division and FMCSA, allow access to testing areas and routes, and supply student names and testing records, results, and any other items as requested by the Division or FMCSA. Failure to fully cooperate may result in discipline, up to and including license revocation.

- 12.8 The Division will randomly audit ST motor vehicle records and must authorize the Division to access any TPTO vehicle registration data maintained in the Division's database.
- 12.9 The Division will conduct audits in compliance with 49 CFR §383.75 (a)(5).

13.0 Advertising

- 13.1 Advertisements must not imply that a TPTO can issue or guarantee the issuance of a Delaware driver credential.
- 13.2 Advertisements, TPTO employees, and subcontractors must not imply that a TPTO or the employee or subcontractor has influence with the Division on the issuance of a Delaware driver credential.
- 13.3 No TPTO agent, ST, or other TPTO employee may in anyway represent themselves as agents or employees of the Division.
- 13.4 No TPTO agent, ST, or other TPTO employee is permitted to solicit or advertise by placing marketing materials anywhere on the premises of any Division office.
- 13.5 Use of the Delaware State seal or Division logo by a TPTO is strictly prohibited for the purposes of promoting the TPTO business.
- 13.6 TPTOs must not advertise a business practice that violates any Federal or State statute, rule, policy, or regulation.
- 13.7 TPTOs cannot solicit Division employees at any time.

14.0 Decertification, Probation, Suspension, Cancellation, Denial, Renewal Refusal, and Revocation

- 14.1 New applications for a TPTO license or ST certification can be denied, or a current TPTO licenses or ST certification can be placed on probation, suspended, revoked, or refused renewal for any one of the following reasons:
 - 14.1.1 Falsification of information or making a material misstatement on or accompanying the application for certification, recertification, licensing, or renewal;
 - 14.1.2 Change in the business location without prior notification to and approval by the Division;
 - 14.1.3 Change of ownership without prior notification to and approval by the Division;
 - 14.1.4 An ST failing to attend a Division continuing education or refresher class within a 3 year period until the continuing education has been successfully completed;
 - 14.1.5 An ST failing to attend the scheduled refresher class;
 - 14.1.6 An ST failing to pass the Division's in-vehicle evaluation audit;
 - 14.1.7 Fraudulent use of the forms or completion statements by an ST;
 - 14.1.8 Testing on an unapproved testing route;
 - 14.1.9 Unauthorized use of a certificate number of an individual ST's certification;
 - 14.1.10 Falsification of or failure to keep and provide, adequate records and information in the approved record management plan as described in subsection 5.5.3 of this regulation;
 - 14.1.11 Falsification of or failure keep and provide, adequate financial records and documents as required, including a refusal to be audited;
 - 14.1.12 Failure to comply with the SRE requirements described in Section 11.0 of this regulation, to include the altering or omission of exam material and content without approval from the Division;
 - 14.1.13 Failure to provide updated insurance and vehicle registration information to the Division within 30 days of expiration until current insurance or registration is received;
 - 14.1.14 Failure of a TPTO to address or correct problems found in a previous audit;
 - 14.1.15 Failure to comply after receipt from the Division of a cease-and-desist order or written warning;
 - 14.1.16 Failure of the TPTO to comply with State or Federal laws and regulations, standards, or contractual obligations;
 - 14.1.17 Submission of documentation that represents testing has been successfully completed when the CDL applicant has not successfully completed testing;
 - 14.1.18 Examination of a CDL applicant before they meet the statutory requirements or postdating a completion application or statement;
 - 14.1.19 Omission of any test requirements from an SRE by a TPTO or ST;
 - 14.1.20 Allowance of a CDL applicant to test more than once per day;
 - 14.1.21 Use of approved testing routes as a pre-test or practice for CDL applicants;
 - 14.1.22 Failure to execute test pad maintenance per submitted plan;

- 14.1.23 Failure of the TPTO to meet the requirement for delivering SREs to the minimum number of applicants over any given 12-month period;
- 14.1.24 As the result of a complaint or hearing decision, as described in Section 15.0 of this regulation;
- 14.1.25 Failure of a TPTO to report a change of status with the driver license of one of its ST;
- 14.1.26 Failure of a TPTO to submit monthly reports, if required, by the 10th of the month for the prior month, unless a hardship is determined by the Division. The failure to submit monthly reports required of a TPTO on more than one occasion during any 12-month period may result in additional suspension or revocation of privileges up to and including revocation of the license or denial of a license renewal;
- 14.1.27 Failure of a TPTO to comply with the conditions set forth in their contract with the Division;
- 14.1.28 An ST administering any road skills exam to a member of their immediate family; or
- 14.1.29 Participation in criminal activities including:
 - 14.1.29.1 An ST convicted of any felony charges per 49 CFR §384.228(h) after the application date;
 - 14.1.29.2 An ST, employee, or subcontractor of a TPTO who has access to the computerized systems for entering test scores and schedules and has been convicted of or pled guilty or nolo contendere to a felony or received a deferred sentence to a felony charge;
 - 14.1.29.3 An ST who participates in any illegal activity related to driver licensing or testing; or
 - 14.1.29.4 An ST who has accumulated 5 or more points on their driver license within a 3-year period, or their license has been suspended, revoked, forfeited, or denied by the Division.
- 14.2 If a TPTO is found to be non-compliant with the terms of its agreement with the Division, then the agreement between the Division and the TPTO may be terminated.
- 14.3 If the Division believes that an ST has violated the provisions of these rules or any Federal regulations, state statutes, or that the public health, safety, or welfare is at risk, the Division will act in accordance with 49 CFR §383.75 (a) (6).
- 14.4 The Division reserves the right to permanently revoke any privileges of the program described in this regulation.
- 14.5 If a CDL applicant's testing was improper, illegal, or fraudulent, the applicant may have their driver license canceled, suspended, revoked, disqualified, denied, or downgraded.
- 14.6 In the event the TPTO license is not renewed or is otherwise suspended or revoked, all individual ST certifications associated with that TPTO will be cancelled.
- 14.7 A TPTO or ST who has their license cancelled or decertified must wait 6 months from the date of decertification or license cancellation before applying for recertification or licensing.
- 14.8 An ST who is decertified solely as the result of a TPTO license being suspended, cancelled, revoked, or otherwise not renewed will not be required to serve the six month waiting period before reapplying as outlined in subsection 14.7.

15.0 Customer Complaints

- 15.1 Any person who wishes to file a complaint regarding any TPTO or ST must do so in writing to:
 - Delaware Division of Motor Vehicles
 - Attn: Driver Services, CDL Section
 - P.O. Box 698
 - Dover, DE 19903
- 15.2 The complaint shall state the name of the TPTO, any applicable STs, and the facts which constitute the basis of the complaint. The Division may, at its discretion, dismiss the complaint without a hearing. A dismissal of the complaint shall be without prejudice and no further action shall be taken by the Division.
- 15.3 The Division, upon determining that the complaint merits further investigation shall:
 - 15.3.1 Assign a staff member to investigate the complaint;
 - 15.3.2 Provide a redacted copy of the complaint, removing personal identifiable information (PII) of the complainant unless required for the response, within 15 business days of its filing to the TPTO or ST who is subject of the complaint; and
 - 15.3.3 Send the complaint by certified mail or other verifiable means to the TPTO or ST named in the complaint at the address or addresses of record on file.
- 15.4 All TPTOs must cooperate with any investigation of a complaint against the TPTO or ST. Failure to cooperate with any investigation may be used as the basis for additional action against the TPTO, the ST, or both, by the Division.

- 15.5 The TPTO or ST has 15 business days from the date on which the redacted copy was provided to respond to the complaint in writing to the Division at the address provided in subsection 15.1.
- 15.6 Upon a recommendation for further action, the Director or the Director's designee, shall determine whether the TPTO or ST shall receive a written warning, be placed on probation for not more than 90 days, be suspended for a period not to exceed 6 months, be permanently decertified, or be revoked for one or more violations of this regulation. For purposes of the enforcement of this regulation and the protection of the public, progressive discipline is not required.
- 15.7 Upon a finding provided for in subsection 15.6 of this regulation, the Division shall provide written notice to the TPTO or ST by certified mail, email with receipt, or other delivery service with receipt. A copy of the notice shall also be provided to the complainant. The notice shall include the following:
 - 15.7.1 A summary of the complaint;
 - 15.7.2 A summary of the information obtained in the investigation;
 - 15.7.3 Findings of fact or law, including the law or regulation allegedly violated by the TPTO or ST;
 - 15.7.4 A statement by the Division on whether action will be taken and a description of the course of action intended; and
 - 15.7.5 Notice of the TPTO's or ST's right to request a hearing to dispute the complaint. The hearing must be requested within 10 business days from the date on which the TPTO or ST received the certified or receipted notice.

16.0 Hearings

- 16.1 The Division will provide prior notice to any TPTO or ST of an intent to suspend, revoke, deny, refuse renewal, cancel, or decertify a license or certification as the result of a complaint or for any other reason per this regulation.
- 16.2 The written notice will be provided by certified mail, email with receipt, or other delivery service with receipt and shall inform the TPTO or ST of the following:
 - 16.2.1 The Division's proposed action against the TPTO or ST;
 - 16.2.2 The nature of the complaint or finding and the law or regulation allegedly violated by the TPTO or ST;
 - 16.2.3 The citation of the law or regulation giving the Division the authority to act;
 - 16.2.4 The right to request a hearing to dispute the complaint. The hearing must be requested within 10 days from the date that the TPTO or ST received the notice or the Division received the return receipt for delivery of the notice, whichever date is earlier; and
 - 16.2.5 The right of the TPTO or ST to present evidence, to be represented by counsel, and to appear personally or by other representative at the hearing.
- 16.3 If the TPTO or ST requests a hearing, one will be scheduled by the Division with a minimum notice of 10 business days.
- 16.3 The Division Director, or the Director's designee, may initiate investigations, appoint a hearing officer, or subpoena witnesses.
- 16.4 The Director, or the Director's designee, may postpone or continue any hearing for any reason.
- 16.5 The TPTO or ST may request up to 2 continuances of the hearing upon written application to the Division for good cause shown.
- 16.6 The granting or denying of a request for continuance made by the TPTO or ST shall be in the sole discretion of the Division.
- 16.7 Any intended suspension, revocation, decertification, or license removal by the Division will not be implemented until after the Director, or the Director's designee, has rendered a decision and provided written notice to all parties of that decision by certified mail, email with receipt, or other delivery service with receipt.
- 16.8 After the hearing, the Director, or the Director's designee, shall consider the nature of the violation or violations, the TPTO's or ST's willingness to make restitution to all parties harmed by the actions and the effect of the proposed action on the community.
- 16.9 TPTOs must return licenses and any other program documents to the Division within 10 business days of the cessation of business.