

APPENDIX A

ROAD AND SKILLS TESTING BY THIRD-PARTY TESTERS

1. DEFINITIONS.

1.1. **Scope.** The terms used in this section have the meanings given them in this section.

1.2. **Applicant.** "Applicant" means an entity applying for approval to be a third-party testing program.

1.3. **Commercial driver's license.** "Commercial driver's license" means a license issued by the North Dakota Department of Transportation to operate a commercial motor vehicle.

1.4. **Entity.** Unless otherwise expressly described or limited, "entity" includes an individual, natural person, and a legal or corporate person, however organized.

1.5. **Third-party tester.** "Third-party tester" means an individual who is an employee of a third-party testing program who has qualified for a third-party tester certificate issued by the director granting the individual authorization to conduct pre-trip inspections, basic control skills and road tests.

1.6. **Third-party tester certificate.** "Third-party tester certificate" means a certificate issued by the director to the third-party tester authorizing the third-party tester to administer pre-trip inspections, basic control skills and road tests on behalf of a specified third-party testing program.

1.7. **Third-party testing program.** "Third-party testing program" means a program authorized by the director to administer to an individual the pre-trip inspections, basic control skills and road tests as defined in the Driver's License Division Examiner Manual.

1.8. **Third Party Testing Program Certificate.** "Third party testing program certificate" means a certificate issued by the North Dakota Department of Transportation Director, hereafter called, director, to the third-party tester program authorizing the program to administer approved tests on behalf of the director.

2. THIRD-PARTY TESTING PROGRAM ELIGIBILITY.

2.1. **Designation.** To be designated by the NDDOT as a third party testing program, an entity must meet one of the program categories specified in this section.

2.2. **Postsecondary school.** A third party testing program that is a postsecondary school must:

2.2.1. Be a public institution regulated by the North Dakota Board of Higher Education;

2.2.2. Own or lease its own vehicles used for testing, or contract to operate government owned vehicles;

2.2.3. Offer courses in operating commercial motor vehicles;

2.2.4. Administer commercial driver's license road and endorsement tests; and

2.2.5. Administer tests only to students enrolled full time who complete courses offered by the institution.

2.3. **Private Driver Training School.** A third-party testing program that is a private driver training school must:

2.3.1. Be certified by the North Dakota Department of Transportation;

2.3.2. Be registered as a business with the secretary of state;

2.3.3. Own or lease its vehicles used for testing;

2.3.4. Offer courses in operating commercial motor vehicles;

2.3.5. Administer commercial driver's license pre-trip inspections, basic control skills and road tests; and

2.3.6. Administer pre-trip inspections, basic control skills and road tests only to students enrolled with the school who complete courses offered by the school.

2.4. A Motor Carrier Company must:

2.4.1. Be registered as a business with the secretary of state;

2.4.2. Own or lease and operate its commercial motor vehicles;

2.4.3. Administer commercial driver's license road tests and any necessary endorsement tests to operate the commercial motor vehicles; and

2.4.4. Administer tests only to employees of the business.

2.5. A School Bus Company must:

2.5.1. Be registered as a business with the secretary of state;

2.5.2. Own or lease and operate its school buses;

2.5.3. Administer road tests and any necessary endorsement tests to operate the school buses; and

2.5.4. Administer tests only to employees of the company.

2.6. A School District must:

2.6.1. Own or lease and operate its school buses;

2.6.2. Administer road tests and any necessary endorsement tests to operate a school bus; and

2.6.3. Unless a bilateral agreement has been approved by the director, administer tests only to employees of the district.

2.7. A Public Transit Authority must:

2.7.1. Own and operate its commercial passenger buses;

2.7.2. Administer road tests and any necessary endorsement tests to operate a bus; and

2.7.3. Administer tests only to employees of the authority.

2.8. A company engaged in business in North Dakota not included in the above categories must:

2.8.1. Be registered as a business with the secretary of state;

2.8.2. Own or lease and operate its commercial motor vehicles;

2.8.3. Administer commercial driver's license road tests and any necessary endorsement tests to operate

the commercial motor vehicles; and

2.8.4. Administer tests only to employees of the business.

3. APPLICATION REQUIREMENTS GENERALLY.

3.1. **Commercial driver's license requirements.** The applicant shall apply to the director for approval to be a third-party testing program authorized to administer pre-trip inspections, basic control skills and road tests for a commercial motor vehicle license or endorsement pursuant to Code of Federal Regulations, title 49, section 383.75. The third-party testing program must continually adhere to the most current North Dakota Driver's License Division CDL testing procedures and federal regulations pertaining to Third Party Tester requirements.

3.2. **Application made to director.** Application to be a third-party testing program must be made to the director and provide the information in section 7. Pre-trip inspections, basic control skills and road tests must not be conducted until the program is approved by the director.

3.3. **Bond Requirement.** The applicant must initiate and maintain a bond in the amount of \$5,000.00 to pay for retesting drivers in the event the third party program or one of its testers is involved in fraudulent activities related to conducting skills testing for applicant for a CDL.

4. LOCATION REQUIREMENT.

4.1. To qualify as a third-party testing program, the applicant must be located in the state of North Dakota and must maintain an administrative office in at least one permanent, regularly occupied building with a permanent address within the state.

5. COMMERCIAL MOTOR VEHICLE TESTING PROGRAM.

5.1. A public, postsecondary educational institution or school as described in section 2 applying to be a third-party testing program for commercial motor vehicles shall offer a training course for commercial motor vehicle operation that consists of at least 120 hours of training.

5.2. Private driver training schools may offer refresher courses for previously licensed commercial drivers that do not meet the 120 hour requirement. However, these refresher courses must include both knowledge and skill portions and be approved by the director.

6. EMPLOYMENT OF CERTIFIED TESTER.

6.1. The applicant must employ at least one certified third-party tester who meets the qualifications in section 14.

7. APPLICATION CONTENTS.

7.1. To apply for approval as a third-party testing program, an applicant must complete an application containing the information specified in this section:

7.1.1. Name of the entity;

7.1.2. Address of the administrative office;

7.1.3. Telephone number, fax number, and e-mail address;

7.1.4. Name of an authorized official responsible for the program and application, and the official's title and telephone number;

7.1.5. Description of type of entity;

7.1.6. Number of years in operation;

7.1.7. Number of commercial motor vehicles owned or operated;

7.1.8. Designation of the class of motor vehicle to be administered for pre-trip inspections, basic control skills and road tests;

7.1.9. The addresses of all locations where examinations will be administered;

7.1.10. A description of the off-road facilities to be used for pre-trip inspections, basic control skills and road tests;

7.1.11. A map, drawing, or written description of the test route to be used for commercial vehicle road tests;

7.1.12. The name, birth date, home address, and driver's license number of all individuals the applicant wants to employ as a certified third-party tester;

7.1.13. Attestation that the applicant carries the required insurance as described in North Dakota Statutes, to include but not limited to Title 39, for all vehicles used for testing; and

7.1.14. Attestation by the authorized official that the information submitted is true and accurate.

8. TEST SITE EVALUATION.

8.1. The director shall evaluate the application submitted by the third-party testing program applicant and, if the application is satisfactory, schedule an on-site inspection of each testing site.

9. DIRECTOR'S THIRD PARTY TESTING PROGRAM CERTIFICATE.

9.1. Upon approval, the director shall issue a certificate to designate a third-party testing program.

9.2. The certificate must specify the state law and rules and federal regulations authorizing the third-party testing program to administer tests. North Dakota Century Code 39-06.2-07 (2)(b); and the Code of Federal Regulations 49 CFR 383.75, Third Party Testing.

9.3. The certificate must specify the pre-trip inspections, basic control skills and road tests the program is authorized to administer.

9.4. The certificate constitutes an agreement between the state and the third-party testing program administering pre-trip inspections, basic control skills and road tests for a commercial driver's license.

10. INDEMNIFICATION.

10.1. An applicant shall agree to indemnify and hold harmless the state and all state officers, employees, and agents of the state from and against all claims, losses, damages, costs, and other proceedings made, sustained, brought, or prosecuted in any manner based on or occasioned by or attributive to any injury, infringement, or damage rising from any act or omission of the third-party testing program or the program's employees in the performance of testing duties.

11. AUDITS.

11.1. **Random examinations, inspections, and audits.** An applicant shall agree to allow representatives of the Federal Motor Carrier Safety Administration, or its representative, and the director, on behalf of the state, to conduct random examinations, inspections, and audits of the testing operation without prior notice.

11.2. **On-site inspections.** An applicant shall permit on-site inspections by agents of the director as

necessary to determine compliance with parts this agreement.

11.3. Examination of test administration. On at least an annual basis, agents of the director who are state employees must be permitted to:

11.3.1. Take the tests actually administered by the third-party testing program as if the state employees were test applicants;

11.3.2. Test a sample of drivers who were examined by the third-party testing program to compare pass/fail results; or

11.3.3. Conduct pre-trip inspections, basic control skills and road tests simultaneously with the third-party tester to compare test results.

11.4. Notice of test schedule. No less than 2 business days in advance, the third-party testing program shall provide the director with the schedule times and dates that pre-trip inspection, basic control skills and road tests are to be given. The schedule must also contain the test applicant's name, driver license number, and test location.

11.4.1. The Pre-trip Inspection, Basic Control Skills, and Road Tests must be conducted during normal business hours Monday through Friday only and must be scheduled at times that will not hinder or interfere with the tests conducted by the state driver license examiners.

12. USE OF CERTIFIED THIRD-PARTY TESTERS.

12.1. The third-party testing program shall allow only individuals who have been certified by the director as third-party testers under section 15 to administer pre-trip inspections, basic control skills and road tests to persons to operate commercial motor vehicles. The program shall maintain, on file in the program's administrative office, a copy of the valid certificate of each third-party tester employed by the program.

13. TEST PROOF.

13.1. The third-party testing program shall use only approved testing criteria and forms provided by the director. The third-party tester must:

13.1.1. Ensure that each student has a valid, unexpired North Dakota Commercial Instruction permit prior to testing.

13.1.2. Collect the required \$5 state testing fee and complete a scorecard and pre-trip inspection form for each student being tested.

13.1.3. Return the \$5 state testing fee to the student if the test is deemed an 'Incomplete' test.

13.1.4. Instruct students who pass the test to visit the respective state driver license office no sooner than two business days to be issued the CDL.

13.1.5. Deliver, in a secure manila envelope, the scorecards pre-trip inspections, and the \$5 state testing fees to the respective state driver license office prior to the student coming in for issuance of the CDL.

13.1.6. Deliver, in a secure manila envelope, the scorecards and pre-trip inspections for failed tests and incomplete tests, and the \$5 testing fees for failed tests to the respective state driver license office no later than five business days after the day of testing.

13.1.7. Ensure all scorecards, pre-trip inspections, and fees remain in the possession of the third party tester until delivered to a driver license examiner.

14. THIRD-PARTY TESTER QUALIFICATIONS.

14.1. **Generally.** To be certified as a third-party tester, an individual must make application to, and be approved by, the director as specified in this part. The individual must:

14.1.1. Possess a valid driver's license for the class and endorsements to operate the type of vehicles for which the pre-trip inspections, basic control skills, and road tests are administered in;

14.1.2. Be at least age 21;

14.1.3. Be a licensed driver in a United States state for the past three years;

14.1.4. Before the date of application, have maintained continuous valid driving privileges for the past year;

14.1.5. Be an employee of a third-party testing program;

14.1.6. Pass an FBI fingerprint based background check at no cost to the NDDOT.

14.1.7. Successfully complete North Dakota Driver's License Division training required of state-employed examiners, consisting of:

14.1.8. A three day training period focusing on License Classifications, Endorsements, Restrictions, General Knowledge and Specialized Knowledge Tests, Traffic Law, General Road Test Administration, Instructions, and Scoring Criteria.

14.1.9. A three day training period focusing on the administration and scoring of the CDL Pre-trip inspection, CDL Basic Control Exercises, and CDL road test.

14.2. **State employee.** A certified third-party tester may not be an employee of the North Dakota Department of Transportation.

14.3. **Driver education instructor.** A third-party tester may not simultaneously be an instructor in a licensed or approved driver education program.

14.4. **Employment.** A certified third-party tester must have a certificate for each third-party testing program that employs the tester. The tester must reapply and be approved for a new certificate to conduct tests on behalf of a new third-party testing program. The tester may be simultaneously employed by more than one program.

14.5. **Maintaining certification.** To maintain certification as a third-party tester, an individual must:

14.5.1. Conduct at least 12 pre-trip inspections, basic control skills and road tests annually over each 24-month period from the date of initial issuance of a third-party tester certificate;

14.5.2. Be evaluated at least annually on the administration of tests and record keeping;

14.5.3. Attend annual in-service training, workshops, or seminars provided by the director;

14.5.4. Submit monthly testing reports in a format specified by the director;

14.5.5. Account for all record of examinations issued by the director to a third-party tester and submit the record of examination immediately to the director after completing pre-trip inspections, basic control skills and road tests; and

14.5.6. Provide proof that all tests administered were to students enrolled full time in a commercial truck driver training course or an employee of the Applicant.

15. CERTIFICATES AND LETTER OF APPROVAL.

15.1. Third Party Testing Program Certificate. The director shall issue a certificate indicating agreement that the third-party testing program may administer pre-trip inspections, basic control skills and road tests.

15.2. Tester certificates. The director shall issue a certificate to each director-approved third-party tester of a third-party testing program.

15.2.1. A copy of the certificate of each third-party tester employed by a third-party testing program must be on file in the office of the third-party testing program.

15.2.2. A third-party tester's certificate is effective on the date of issuance by the director and expires four years after issuance.

15.2.3. A third-party tester may not conduct pre-trip inspections, basic control skills and road tests without a valid third-party tester certificate.

15.2.4. After holding the directors certificate for one year, the third-party tester is required to complete the American Association of Motor Vehicle Administrators International Driver Examiner Certification for Third Party Testers.

15.2.4.1. All costs associated with the certification are to be paid by the third-party testing program. No cost will be transferred to the NDDOT.

15.3. Not transferable. A third party testing program certificate to operate a third-party testing program and any tester certificate is not transferable.

15.4. Certificate renewal time frame. An application for renewal of a third-party tester's certificate must be submitted to the director no less than 30 days before the date the previously issued certificate expires.

16. TEST ADMINISTRATION.

16.1. Generally. Pre-trip inspections, basic control skills and road tests conducted by a third-party tester must meet the requirements in the ND Driver's License Division Examiner Manual.

16.2. Third-party tester restrictions. A third-party tester shall not:

16.2.1. Test a driver who does not possess a valid North Dakota driver's license and a Commercial Instruction Permit;

16.2.2. Delegate any portion of testing to another individual;

16.2.3. Test an individual who is not enrolled as a full-time student of the third-party training program or an employee of the company, dependent on type of testing approval granted;

16.2.4. Test a person related to the tester by blood, marriage, or adoption;

16.2.5. Test any person for a fee, excluding the state required \$5 testing fee;

16.2.6. Test anyone with a physical disability who may need an individualized restriction added to the person's driver's license; or

16.2.7. Test anyone who has not completed all course work and exercises before administering pre-trip inspections, basic control skills and road tests.

16.2.8. Test anyone for whom the tester has provided training and instruction for obtaining skills necessary for a CDL license.

16.3. Repeat test limit.

16.3.1. A third-party testing program may administer a second pre-trip inspection, basic control skill and road test to a student who has failed the initial test only if the student completes four more hours of training beyond that normally provided by the licensed driver education program. The second pre-trip inspection basic control skill and road test cannot be administered on the same day as the initial test.

16.3.2. A student who completes a third-party testing program's driver's education course and twice fails the pre-trip inspection, basic control skill and road test administered by the program, may only take subsequent tests administered by state examiners.

16.4. **Testing contingencies.** A third-party testing program must inform each test applicant that:

16.4.1. Test results and test passage are contingent upon:

16.4.1.2. Completing the approved or licensed truck driver training or education program; and

16.4.2. State examiners may retest a student if:

16.4.2.1. Required by a state or federal audit; or

16.4.2.2. There is reason to believe the test was not appropriately administered under this chapter.

17. RECORD KEEPING.

17.1. **Records of administered tests.** An approved third-party testing program shall maintain at the program's administrative offices, for a minimum of three years, a record of examination consisting of a copy of the completed pre-trip inspection and scorecard of any driver for whom the third-party testing program conducts a test, whether or not the driver passes or fails the test. Each record of examination must include:

17.1.1. The full name of the driver;

17.1.2. The driver license number of the driver;

17.1.3. The date of birth of the driver;

17.1.4. The driver's signature certifying the vehicle represents the vehicle group the driver will be operating;

17.1.5. The date the driver took the test; and

17.1.6. The name and certificate/tester number of the third-party tester conducting the test.

17.2. **Records of third-party testers.** The third-party testing program shall maintain, at the program's administrative offices, a record of each third-party tester in the employ of the third-party testing program at that location. Each record must include:

17.2.1. A valid and complete tester certificate indicating the third-party tester has met all qualifications;

17.2.2. A copy of the third-party tester's current driving record, which must be updated annually;

17.2.3. Evidence that the third-party tester is an employee of the third-party testing program; and

17.2.4. Verification that tests were only administered to students enrolled full-time in a truck driver training education program or an employee of the Applicant.

17.3. **Record retention.** The third-party testing program shall retain all third-party tester records for three years after a third-party tester leaves the employ of the third-party testing program.

18. NOTIFICATION REQUIREMENTS.

18.1. **In general.** The third-party testing program shall ensure that the director is notified in writing or by electronic means:

18.1.1. 30 days before any change in the third-party testing program's name or address;

18.1.2. Ten days before any change in the third-party tester employed by the third-party testing program;

18.1.3. Within ten days of a change in a third-party testers driving status;

18.1.4. Within ten days of the third-party testing program ceasing business operations in North Dakota; or

18.1.5. Within ten days of a third-party tester:

18.1.5.1. Receiving notice from any state that the tester's driving privileges have been withdrawn; or

18.1.5.2. Failing to comply with the third-party testing program or third-party tester requirements in in this agreement.

18.2. **Test route change.** Before changing a test route, a third-party testing program must submit a written request and obtain written approval from the director for any proposed change in the road test route. The request may be submitted by facsimile or electronic mail.

18.3. **Tester change.** A third-party tester shall notify the director within ten days of leaving the employ of a third-party testing program.

19. REPORTING REQUIREMENTS.

19.1. The third-party testing program shall report the number of pre-trip inspections, basic control skills and road tests administered annually by all third-party testers employed by the program. The report must be in writing or in an electronic format approved by the director and must be received by the director within 45 days of the end of each calendar year.

20. DENIAL, CANCELLATION, OR SUSPENSION OF PROGRAM OR TESTER CERTIFICATE.

20.1. **Denial.** The director may deny an application for a third-party testing program or tester certificate if the applicant does not qualify for approval or certification. In addition, a misstatement or misrepresentation is grounds for denying a letter of approval or tester certificate.

20.2. **Cancellation or suspension.** The director reserves the right to cancel the delegation of third-party testing in its entirety or an individual program if a federal audit indicates that continuation of the general delegation or individual program will jeopardize the receipt of federal funds or the state's ability to issue commercial drivers' licenses. The director may cancel the approval of a third-party testing program or third-party tester or may suspend a program or tester for:

20.2.1. Failure to comply with or satisfy any provision of this agreement;

20.2.2. Falsification of any records or information relating to the third-party testing program;

20.2.3. Performance in a manner that compromises the integrity of the third-party testing program; or

20.2.4. The withdrawal of a third-party tester's driving privileges.

20.3. **Director's discretion.** The existence of grounds for cancellation or suspension under 20.2 is determined at the sole discretion of the director. If the director determines that grounds for cancellation or

suspension exist for failure to comply with or satisfy any requirement in this agreement, the director may immediately cancel or suspend the third-party testing program or third-party tester from administering any further tests.

20.4. Cancellation of Licenses of Tester or Organization: If the director determines to suspend or cancel a testing program or a tester within a program, all licenses issued by the tester or the program identified for cancellation or suspension will be cancelled. In this case each licensed driver will be notified by the state and will require retest by state examiners.

20.5. Correction order. If an audit by the director identifies a situation that needs correction but does not merit suspension or cancellation, the director may issue a correction order to a third-party tester or program for 30 days to correct a deficiency before the program or tester becomes subject to suspension or cancellation. The third-party testing program or third-party tester is permitted 30 days to correct the deficiency without having to reapply.

20.6. Notice of denial or cancellation; request for reconsideration and hearing. When an application to be a third-party testing program or third-party tester application is denied, or when individual program approval or a tester's certificate is canceled, a notice must be mailed to the subject indicating the reasons for the denial or cancellation and that a reconsideration and hearing of the action may be requested.

20.6.1. The notice must indicate that the subject of the action has 20 calendar days from the date of the notice to submit a request for reconsideration in writing to the director.

20.6.2. The NDDOT Director shall review the request for reconsideration and issue a decision within 30 days of receipt of the request.

20.6.3. The NDDOT Director's decision is final.