

## Initial Statement of Reasons

### Title 13, Division 1, Chapter 1

#### Article 2.1 – Commercial Driver’s Licenses

The Department of Motor Vehicles (department) proposes to amend Sections 25.06, 25.08, 25.09, 25.10, 25.11, 25.14, 25.15, 25.16, 25.17, 25.18, 25.19, 25.20, 25.21, and 25.22, and adopt Section 25.23, in Article 2.1, Chapter 1, Division 1 of Title 13, California Code of Regulations, related to the Employer Testing Program.

The department is authorized in Part 383 of Title 49 of the Code of Federal Regulations (CFR) and by Vehicle Code section 15250 to use third party testers to conduct the commercial behind the wheel driving tests, under specified conditions. Included among these conditions are the requirements that the tests administered by the third party are the same as those that would otherwise be given by the department, and requires the Examiners meet the same qualifications and training as state Examiners. It was under this authority that the department created the Employer Testing Program. The department defines third party testers as “employers,” requiring an employer-employee relationship between the company and the drivers they intend to train, test, and certify. On May 9, 2011, the Federal Motor Carrier Safety Administration (FMCSA) published its final rule to adopt revisions to the third party tester program that includes creating a process by which an Examiner is required to be certified by the department prior to conducting drive tests. The rules include, as part of the certification process, requiring background checks and formal training for all test Examiners and requiring the establishment of oversight systems for Examiners. The new procedures were established to reduce fraudulent activity in the area of commercial driver’s license testing.

#### **§ 25.06. Authority and Definitions.**

Subsection (a) is amended to update the revision date of the Certificate of Driving Skill, form number DL 170 ETP from 9/06 to 10/2017. All future references to this form will be identified only by the form number.

#### *Certificate of Driving Skill, form DL 170 ETP*

Changes to the DL 170 ETP are non-substantive and include the addition of Section numbers that divide the form into three parts (Driver, Examiner, Employer) and a telephone number update.

Subsection (b) is amended to ensure consistency with the federal definition of driving test that was recently amended with the commercial driver’s license testing and the commercial learner’s permit standards rulemaking.

#### **§ 25.08. Employer Testing Program Enrollment.**

Subsection (a)(1) is amended to update the revision date of the Employer Testing Program Application for Employer Number, form DL 520 ETP from 9/06 to 10/2017. All future references to this form will be identified by the term “Application.”

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*Employer Testing Program Application for Employer Number, form DL 520 ETP*

The DL 520 ETP was amended to remove references to firefighters as the restricted firefighter commercial driver license is no longer available. The DL 520 ETP was also amended to add language related to tax delinquencies to specify the department's compliance with Business and Professions Code section 494.5, which requires the department to suspend the license of a person identified by the State Board of Equalization or the Franchise Tax Board as having a delinquent state tax obligation.

Subsection (a)(2) is amended to update the revision date of the Employer Testing Program Agreement, form DL 520B ETP from 12/2008 to 10/2017. All future references to this form will be identified by the word 'agreement'. Changes made to the form DL 520B ETP are necessary to ensure the agreement matches the provisions of the proposed regulatory text, as well as the federal rules.

*Employer Testing Program Agreement, form DL 520B ETP*

The DL 520B ETP form was revised to ensure the agreement reflected the changes made to the third party testing program. First, and throughout the document, the employers are not referred to as "Employer" and not "Firm." This change is necessary for clarity as the term 'employer' is used throughout the state and federal rules.

Number 6 on the revised form identifies the Bond requirement. This provision is necessary because the bond is a new program requirement and identifying the bond in the agreement will ensure Employers are aware of that requirement that has been adopted in Section 25.23, as authorized by Section 383.75(a)(8)(v) of Title 49, CFR.

Number 7 on the revised agreement references Section 25.22, related to Examiner Certifications, rather than identify reach requirement as did the previous form. Due to the numerous changes made to Section 25.22 to ensure compliance with federal rules, the department determined it would be clearer to reference the regulation, rather than attempt to identify each certification requirement on the agreement.

Number 8a is added to specify that the Employer is required to submit a schedule of skills test appointments at least two business days in advance of the appointments. This provision is necessary to ensure the agreement reflects the proposed adoption of Section 25.20(k), as authorized by Section 383.75(a)(8)(viii) of Title 49, CFR.

Number 8b is amended for clarity to identify the form number of the score sheets and Number 8f is added to specify that the Employer is required to notify the department of the scores when a driver passes or fails the skills test. This provision is necessary to ensure the agreement matches the requirements adopted in Section 25.20(l), as authorized by Section 383.75(b) of Title 49, CFR.

Number 9 is added to specify that the employer is agreeing to allow a DMV employee to covertly take the skills test administered by the employer's examiner. This provision is

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necessary to clearly specify that the Employer is agreeing to the department conducting skills tests on its examiners, as authorized in Section 383.75(a)(5)(i) of Title 49, CFR.

Number 10 is added to the agreement to specify that the employer is agreeing to allow a DMV employee to co-score with the examiner during a skills test. This provision is necessary to clearly specify that the Employer is agreeing to the department conducting skills tests with its examiners, as authorized in Section 383.75(a)(5)(ii) of Title 49, CFR.

Number 11 of the agreement is added to the agreement to identify the records that the examiner is required to maintain at its principal place of business. The records are identified in subsections (a) through (g).

Number 11a requires the Employer to maintain its DMV certificate authorizing the Employer to administer CDL skills tests.

Number 11b requires the Employer to maintain the DMV certificate acknowledging the Administrator Training by the Administrator.

Number 11c requires the Employer to maintain the DMV certificate for each of the Employer's examiners authorized to conduct skills tests for the Employer.

Number 11d requires the Employer to maintain the current Employer's Agreement.

Number 11e requires the Employer to maintain each completed skills test score sheet for the current year and past two calendar years.

Number 11f requires the Employer to maintain its DMV-approved test routes.

Number 11g requires the Employer to maintain its training records for each examiner.

These records are a part of the Employer's documentation related to the examiner and testing conducted under the employer testing program. Because the department reviews these documents to ensure compliance with the regulations and to verify that department approvals have been met, it is necessary to ensure the Employer maintains these records at its principal place of business to ensure they are readily accessible in the event the department requests to review the records. This list will ensure the Employers are aware of all the documentation required to be maintained.

Numbers 16, 17, 19, and 20, Numbers 11, 12, 14, and 15 on the previous version of the form, contain the same requirements, however, for clarity, the department has added the corresponding Vehicle Code sections and CCR sections that address suspensions and revocations.

Subsection (a)(4) is adopted to incorporate by reference the Employer Testing Program Surety Bond, form DL 524 ETP (New 1/2018). The department is required by Section 383.75(a)(8)(v), Title 49 of the CFR, to require a third party tester to initiate and maintain a bond in an amount determined by the state to be sufficient to pay for re-testing drivers in the event that the third party or one or more of its Examiners is involved in fraudulent activities related to conducting skills

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testing of CDL applicants. In determining a sufficient bond amount, the department followed the Commercial Driver License (CDL) “Best Practices Document” published by the American Association of Motor Vehicle Administrators (AAMVA).

*Employer Testing Program Surety Bond, form DL 524 ETP*

The DL 524 ETP is a new form that a third party tester submits to the department providing evidence of a surety bond.

The form identifies the required surety bond amount adopted in Section 25.23. The form includes a statement specifying the required bond conditions.

The third party tester is required to provide the bond number, premium amount, principal names doing business as, service address, surety name, State of incorporation, surety service address, and bond effective date. This information is necessary to ensure that the department can verify surety bond requirements.

Former subsection (a)(4) is renumbered to (a)(5) and is further amended to update the revision dates of the Employer Testing Program Commercial Driving Performance Evaluation Route and Directions, form DL 814 ETP, from 2/03 to 2/2005, and the Employer Testing Program Commercial DPE Maneuver Checklist, form DL 807 ETP, from 9/06 to 10/2017. Future references to these forms will be identified only by the form numbers.

*Employer Testing Program Commercial Driving Performance Evaluation Route and Directions, form DL 814 ETP*

This form contains one non-substantive amendment to increase the page count from four pages to six pages. The additional pages will allow Examiners to report on more testing maneuvers.

*Employer Testing Program Commercial DPE Maneuver Checklist, form DL 807 ETP*

The DL 807 ETP was amended to remove the turn maneuver entitled “Left- Uncontrolled” to Left- Miscellaneous.” Renaming the maneuver will allow Examiners greater flexibility when testing in their specific geographic locations. The form was also amended to update the department’s telephone number on page two.

Former subsection (a)(5) is renumbered to (a)(6).

Subsections (c) and (d) are amended to remove reference to the DL 520 ETP.

Subsection (e) is amended to remove the provision whereby the department will issue renewals on a staggered basis. When the ETP program was adopted, the department implemented the staggered renewal process to ensure all ETPs did not renew at the same time. Since this program has been operational for many years, the department has determined that there is no longer a need for the staggered renewal process. All renewal periods will be for a three year period.

Subsection (f)(1) is amended to remove reference to the DL 520 ETP and the DL 520B ETP.

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Subsection (g)(1) is amended to remove reference to the DL 520 ETP.

Subsection (g)(2) is repealed. The repeal is necessary to remove reference to the Application for Employer Number Addendum, form DL 520F ETP. This form was solely for use by firefighting organizations. The department amended this section several years ago under the Section 100 process because the restricted firefighter commercial driver license is no longer available. This section was inadvertently missed when that Section 100 was completed.

Subsection (g)(3) is renumbered to (g)(2), and amended to remove reference to the form number and revision date of the DL 520B ETP.

Subsections (g)(4) and (g)(5) are renumbered to (g)(3) and (g)(4), respectively.

Subsection (h) is amended to remove the form names and revision dates and require drive test routes and route maps to be submitted with each renewal application rather than upon its first renewal application. Requiring test routes and maps at each renewal will allow the department to verify that the testing continues to meet the maneuver requirements to maintain compliance with FMCSA.

Subsection (j) is amended to remove reference to the form number and revision date of the DL 520 ETP.

**§ 25.09. Application Changes.**

Subsections (a) and (b) are amended to remove reference to the form number and revision date of the DL 520 ETP.

**§ 25.10. Driving Test Routes.**

Subsection (a) is amended to remove the form name and revision date of the forms DL 814 ETP and DL 807 ETP.

Subsection (b) is amended to remove the form name and revision date of the DL 170 ETP.

Subsection (c) is repealed. Section 383.135(b) in Title 49, CFR, requires skills to be in accordance with the examiner manual described in Section 383.131(b). The examiner manual lists the required route element maneuvers. There is no waiver for missing elements.

Subsections (d) and (e) are renumbered to subsections (c) and (d), respectively, and the form names and revision dates have been removed.

**§ 25.11. Quality Assurance Oversight.**

Non-substantive amendments are made to Section 25.11 including amending subsection (a)(1) to add reference to Section 25.23 and add the FMCSA rather than spelling out Federal Motor Carrier Safety Administration.

**§ 25.14. Certificate of Driving Skill (DL 170 ETP).**

The title of Section 25.14 is amended to remove reference to the DL 170F ETP. The form is no longer used by the department because the restricted firefighter commercial driver license is no longer available.

Subsections (a) and (b) are amended to remove the form name and revision date of the DL 170 ETP. Subsection (c) is repealed because specifying the form components is no longer necessary as the DL 170 ETP is incorporated by reference in Section 25.06(a).

**§ 25.15. Record-Keeping Program.**

Subsection (a)(11) is amended to specify that the Examiner's log shall document the current calendar year rather than the past 90 days and to update the revision date of the DL 819 ETP, Examiner Driver Testing Log, from New 1/2005 to Rev. 10/2017. The necessity for removing the requirement that examiner logs document the past 90 days is to ensure compliance with federal rules. Section 383.75(b) of Title 49, CFR, requires states to revoke the certification of an examiner who fails to conduct at least 10 different applicants per year. Requiring the examiner log to document the current calendar year will ensure the log captures the year of testing, rather than only 90 days. All future references to this form will be identified only by the form number.

*Employer Testing Program Examiner Driver Testing Log, form DL 819 ETP*

Changes to the form are non-substantive and are limited to the removal of firefighter non-commercial class A and class B options. The form is no longer used by the department because the restricted firefighter commercial driver license is no longer available.

Because the DL 819 ETP is incorporated by reference, the department is removing the form contents specified in subsections (a)(11)(A) through (K) for lack of necessity.

Subsections (a)(13), (a)(14) and (a)(15) are updated to remove the form name and revision date of the forms DL 170 ETP, the DL 814 ETP, and the DL 807 ETP.

Subsection (c) contains a non-substantive amendment to use the FMCSA acronym and remove the form number and revision date of the application form.

Subsection (d)(2) contains a non-substantive amendment to remove the form name and revision date of the DL 170 ETP.

**§ 25.16. Sample Testing of Certified Drivers.**

Subsection (a) contains a non-substantive amendment to capitalize the word 'Examiners.'

Subsections (f) and (g) are amended to remove the form name and revision date of the DL 170 ETP.

**§ 25.17. Cancellations/Reinstatements.**

Subsection (a) is amended to update the revision date of the Employer Testing Program Voluntary Cancellation Request of Employer Number, form DL 520C ETP, from 9/06 to 10/2017.

*Employer Testing Program Voluntary Cancellation Request of Employer Number, form DL 520C ETP*

The change to the form is non-substantive and includes relocating the department's logo from the middle of the page to the left corner of the page.

Subsection (b) is amended to update the revision date of the Employer Testing Program Request for Reactivation Employer Number, form DL 817 ETP, from 8/03 to 10/2017.

*Employer Testing Program Request for Reactivation Employer Number, form DL 817 ETP*

There is only one non-substantive amendment made to the form. The California Code of Regulations (CCR) citation was updated from 25.22 to 25.23 in the paragraph above the space for the Administrator's certification.

Subsection (b) is further amended to remove the form names and revision dates of the forms DL 814 ETP and DL 807 ETP.

**§ 25.18. Sanctions/Reinstatements.**

Subsection (a)(2) contains a non-substantive amendment to add Section 25.23. Section 25.23 is adopted in this proposed regulatory action.

Subsection (b) contains a non-substantive amendment to identify the full revision date of the guidelines as 9/3/2002.

Subsection (f) is adopted to remove the form number and the revision date of the application. The application was incorporated by reference in Section 25.08.

Subsection (h) is adopted to provide that the department will immediately terminate the certification of an Examiner who:

- Fails to conduct skills tests for at least ten different applicants per calendar year, as required by Title 49, CFR, Section 383.75(c); or
- Fails to meet the training requirements, as required by Title 49, CFR, Section 384.228; or
- The department receives notification as a result of a nationwide background check, has a felony conviction within the last ten years, as provided in Title 49, CFR, Section 384.228(h)(3)(i), or has a conviction involving fraudulent activity, as required by Title 49, CFR, Section 384.228(h)(3)(ii).

Former subsection (h) is renumbered to subsection (i) and is further amended to remove the word 'reinstated' and replace with 'recertified.' When the applicant loses their Examiner eligibility under the provisions of subsection (g) or (h), they are not simply going through a reinstatement process, they will be required to complete the certification process as specified in Section 25.22. Because there is no longer a reinstatement process, the department is making obsolete the Employer Testing Program Request for Reinstatement – Examiner, form DL 810 ETP.

**§ 25.19. Employer Roles and Responsibilities.**

Subsections (a)(3) and (c) are amended to remove the form name and revision date of the DL 170 ETP.

Subsection (f) is amended to remove the phrase “Upon adoption of these regulations” for lack of necessity.

Subsection (f)(1) is amended to specify that, prior to conducting a drive test, the employer must ensure that the Examiner has been certified as specified in Section 25.22. This provision will make clear that the employer is required to verify the Examiner’s certification. This verification will ensure that only qualified Examiners are conducting tests.

Subsection (f)(3) is adopted to require an employer to ensure the Examiner submits fingerprints at a California Live Scan facility at time of appointment and passes a nationwide background check prior to certification to administer a commercial driver’s license skills test. Title 49, CFR, Section 384.228(g) requires states to complete nationwide criminal background checks of Examiners prior to the Examiners conducting testing. California requires Examiners to submit fingerprints at a California Live Scan facility. The facility will check the fingerprints against national databases and provide notification of the results of the check.

Subsection (f)(4) is adopted to require an employer to ensure the Examiner submits fingerprints at a California Live Scan facility and passes a nationwide background check at the time of first recertification. Section 384.228(g) of Title 49, CFR, requires states to require examiners to have a nationwide background check prior to certification. The department uses the California Department of Justice to conduct these checks. This adoption is not only necessary to ensure compliance with federal rules but also make clear to the examiner that the employer will be ensuring the background check has been complete.

Subsection (g)(5) is amended to replace the phrase ‘instruction permit’ with ‘commercial learner’s permit.’ This amendment will ensure consistency with the terminology used in the federal rules.

Subsection (g)(8) is amended for clarity by removing the words ‘score sheets’ and adding the form number. The department has opted to identify the form number of the score sheets rather than using the general term of ‘score sheets.’ This amendment will ensure the Examiner is providing the correct documentation to the employer.

Subsection (g)(10) is amended to ensure consistency with the federal rules. Currently, an Examiner must maintain eligibility by conducting one drive test during a consecutive 90 day period or attend and pass a refresher training to reinstate the Examiner’s eligibility. This amendment adopts both the provisions of Title 49, CFR, Section 384.228, which requires Examiners to attend training, and Title 49, CFR, Section 383.75(c), which requires an Examiner to conduct at least ten examinations per calendar year.

Subsection (g)(11) is amended to remove the form name and revision date of the DL 819 ETP. Also, subsection (g)(11) is amended to require the employer to utilize the department’s chosen electronic method for retention and transmission of skills tests in place of maintaining the DL 819

ETP. This amendment is necessary to identify the Commercial Skills Testing Information Management System, or CSTIMS, as the department's method for submitting electronic information to the department.

Subsections (g)(13), (g)(14), and (h) are amended to remove the form name and revision date of the DL 170 ETP.

**§ 25.20. Administrator Roles and Responsibilities.**

Subsection (b) is amended to remove reference to the form number and revision date of the DL 520 ETP and the form names and revision dates of the forms DL 814 ETP and DL 807 ETP.

Subsections (c) and (d) are amended to update the sections referenced.

Subsection (i) is amended to remove the form name and revision date of the DL 170 ETP.

Subsection (j) is amended to require the Administrator to ensure that the Examiner is certified by the department, rather than just check for completion of training and appropriate licensure. This provision will ensure consistency with Title 49, CFR, Section 384.228. Specifically, Title 49, CFR, Section 384.228(b) requires states to require all State knowledge and skills test examiners to successfully complete a formal CDL test examiner training course and examination before certifying them to administer CDL knowledge and skills tests, and Title 49, CFR, Section 384.228(e) which requires all third party skills test examiners to successfully complete a formal CDL test examiner training course and examination before certifying them to administer CDL skills tests.

Subsection (k) is adopted to require the Administrator to submit to the department a schedule of commercial driver license skills test appointments no later than two business days prior to each test. This provision is consistent with Title 49, CFR, Section 383.75(a)(8)(viii). To ensure the appropriate information is provided, the department is adopting, incorporating by reference, and requiring completion of the Notification of Commercial Skills Test Schedule, form OL 810 (New 10/2017). Once operational, the department will notify the Administrator that the information contained in the OL 810, can be submitted electronically to the department using the CSTIMS.

*Notification of Commercial Skills Test Schedule, form OL 810*

The OL 810 is a new form that an Administrator submits to the department no later than two days prior to a scheduled commercial driver license skills test appointment.

The form identifies appropriate testing information to ensure consistency with Title 49, CFR, Section 383.75(a)(8)(viii).

The Administrator is required to provide the company name, ETP number, address, and telephone number in Section 1. The Administrator is also required to provide the Examiner's true full name, the driver's true full name, testing location, test date, and the test time in Section 2. The Administrator must certify under penalty of perjury that the information provided on the form is true and correct in Section 3. The perjury statement is necessary to ensure that the Administrator provides correct and accurate information. The

perjury statement is consistent with other departmental forms that require the applicant to sign under penalty of perjury, and is consistent with the statement provided in Code of Civil Procedure section 2015.5(b).

Subsection (l) is adopted to require the Administrator to notify the department of all skills test scores. The Administrator will use CSTIMS to provide the notification. This provision is necessary to ensure compliance with Title 49, CFR, Section 383.135(c) which requires states to establish and maintain a database to track pass/fail rates of applicants tested by each State and third party CDL skills test examiner, in order to focus covert and overt monitoring on examiners who have unusually high pass or failure rates; establish and maintain a database of all third party testers and examiners, which at a minimum tracks the dates and results of audits and monitoring actions by the State, the dates third party testers were certified by the State, and name and identification number of each third party CDL skills test examiner; establish and maintain a database of all State CDL skills examiners, which at a minimum tracks the dates and results of monitoring action by the State, and the name and identification number of each State CDL skills examiner; and establish and maintain a database that tracks skills tests administered by each State and third party CDL skills test examiner's name and identification number. The department utilizes CSTIMS to meet these requirements.

Former subsection (k) is renumbered to subsection (m).

#### **§ 25.21. Authorized Representative Roles and Responsibilities.**

Subsection (b) is amended to remove the form name and revision date of the DL 170 ETP.

Subsection (c)(2) is amended to require the authorized representative to verify that the Examiner is certified by the department.

Subsection (h) is amended to remove the form name and revision date of the DL 170 ETP.

#### **§ 25.22. Examiner Certification and Responsibilities.**

The title of Section 25.22 is amended from Examiner Roles and Responsibilities to Examiner Certification and Responsibility to ensure compliance with Title 49, CFR, Section 383.75, requiring third party Examiners to be certified.

Subsection (a) is amended to specify that the Examiner must be certified by the department before he or she can conduct testing.

Subsection (a)(1) is amended to update the form name and revision date of the DL 811 ETP. The DL 811 ETP is renamed from Employer Testing Program Examiner Application to Employer Testing Program Examiner Certification Application, with a revision date of 10/2017. This form is used when an Examiner is applying for certification from the department.

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*Employer Testing Program Examiner Certification Application, form DL 811 ETP*

Changes to the DL 811 ETP are limited to removing the reference to the \$150.00 training fee. This form is no longer used for training so identifying the fee is no longer necessary. The fee is moved to the DL 818 ETP.

A statement is also added at the end of the form related to tax delinquencies to specify the department's compliance with Business and Professions Code Section 494.5, which requires the department to suspend the license of a person identified by the State Board of Equalization or the Franchise Tax Board as having a delinquent state tax obligation.

The instructions on the second page have also been amended to ensure consistency with the revised regulations.

Subsection (a)(1) is also amended to adopt and incorporate by reference the Employer Testing Program Refresher Training Request, form DL 818 ETP (Rev. 10/2017).

*Employer Testing Program Refresher Training Request, form DL 818 ETP*

The DL 818 ETP is a new form that an Examiner submits when requesting DMV-sponsored refresher training.

The form identifies the training fee of \$150, a fee already adopted in Section 25.22(a)(6). The form includes a statement that the Examiner has the appropriate class of commercial driver license with any appropriate endorsement(s) and/or restrictions as required to operate the company's vehicle. The form directs the Examiner to contact the department to determine a list of available training classes.

The Examiner is required to provide the first and second training choices, their name, telephone number, driver's license number, mailing address, employer name, employer number, and the employer mailing address. This information is necessary to ensure the department can verify licensure, endorsements, and employment, and then add the Examiner to one of the requested courses. The form also contains a remittance address where the Examiner is required to send the form once it has been completed.

Subsection (a)(2) is amended to remove reference to new and reinstated Examiners. All Examiners are required to hold a valid commercial driver license for at least three years, with the appropriate class and endorsements. The verbiage being removed is not necessary.

Subsection (a)(4) is adopted to require an Examiner to have a valid medical certificate.

Subsections (a)(4) through (a)(6) are renumbered to (a)(5) through (a)(7), respectively.

Subsection (a)(7)(A) is amended to clarify that the training fee is always non-refundable.

Subsection (a)(6)(C) is repealed because the provisions no longer comply with federal rules.

Subsection (a)(7) is repealed. This provision is moved to subsection (d)(1).

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Subsection (a)(8) is adopted to ensure compliance with federal rules by requiring an Examiner to submit fingerprints at a California Live Scan facility. Submission of fingerprints will allow for the nationwide criminal background check. Fingerprint submissions are requested on a departmental form entitled Request for Live Scan Service Applicant Submission, form DMV 8016 (Rev. 10/2017). Subsections (a)(8)(A) and (B) are adopted to make clear that the applicant must provide their true full name on the form DMV 8016 and a copy must be submitted with the DL 811 ETP to serve as confirmation that fingerprints were submitted.

*Request for Live Scan Service Applicant Submission, form DMV 8016*

The form DMV 8016 was last adopted in OAL File number 03-0606-03S (Register 2003, No. 29) with the 11/99 revision date in Section 330.06(a), Article 4.5, in Title 13, related to fingerprints for registration services. Changes to the form is limited to requiring the applicant to identify the submitting agency on the form. Occupational licensing applicants mark box A and commercial applicants mark box B. As with the previous version of the form, the applicant is required to indicate their name, date of birth, sex, height, weight, eye color, hair color, place of birth, social security number, driver's license number, and home address and telephone number.

Subsection (b) is adopted to make clear that the certification is valid for four years and to recertify, the Examiner must fulfill all the requirements provided in Section 25.22. This provision is necessary to ensure compliance with federal rules. Section 384.229(j) of Title 49, CFR, requires the certification to be rescinded if the examiner does not successfully complete the required refresher every four years. This provision makes clear that the refresher is part of the examiner's certification requirements.

Subsection (c) is adopted to identify circumstances under which an Examiner's certification will be terminated. Those circumstances include the department receiving notice as a result of the live scan that the Examiner was convicted of a felony within the last ten years, as specified in subsection (c)(1)(A), if the Examiner was involved in fraudulent activity, as specified in subsection (c)(1)(B), if the Examiner fails to conduct at least ten different drive tests in a calendar year, as specified in subsection (c)(2), or if the Examiner fails to comply with any state or federal regulations, as specified in subsection (c)(3). The adopting of subsection (c) will ensure Examiners are aware of the circumstances under which their certification will be terminated.

Subsection (d) is adopted to clearly identify each requirement an Examiner must fulfill prior to conducting a commercial drive test. Subsection (d)(1) is adopted to specify that the Examiner must be under written contract with the employer at the time the Examiner conducts the skills test. Subsection (d)(1)(A) is adopted to specify that the Examiner may work for more than one employer concurrently, as long as they are under a written contract with each employer. These provisions are necessary to ensure the Examiner is qualified to conduct tests as, to be under contract, the employer must have verified the Examiners certification.

Subsections (b) through (e) are renumbered to subsections (d)(2) through (d)(5) respectively. Subsection (d)(4) is amended to remove the form name and revision date of the DL 819 ETP.

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Subsection (f) is renumbered to subsection (e). Subsection (e) is further amended to remove the 90 day requirement and, instead, requires the Examiner to recertify if they fail to conduct skills tests for at least ten different applicants per calendar year. This amendment will ensure consistency with the amended federal rules.

Former subsection (f)(1) is repealed. Federal rules eliminated the 90 day requirement.

Former subsection (f)(1)(A) is renumbered to (e)(1) as this subsection gives greater detail to conducting the skills test.

Former subsection (f)(1)(B) is renumbered to (e)(2). Subsection (e)(2) is further amended to remove the form name and revision date of the DL 819 ETP.

Former subsection (f)(1)(C) is renumbered to (e)(3) as this subsection gives greater detail to conducting the skills test.

Former subsections (g) through (i) are renumbered (f) through (h), respectively.

Former subsection (j) is renumbered to (i). Subsection (i) is further amended to remove the form name and revision date of the DL 170 ETP.

Subsection (k) is repealed. Section 25.22(d)(1)(A) allows an Examiner to work for more than one employer concurrently, as long as he or she is under written contract with each employer.

Former subsection (l) is renumbered to (j).

Subsection (m) is repealed as the department no longer requires the Examiner to ensure the DL 51 is on file with the department. Subsection (a)(4) of this section requires the Examiner to maintain a valid medical certificate.

Subsections (n) and (o) are renumbered to (k) and (l), respectively.

**§ 25.23. Employer Testing Program Bond Requirements.**

Section 25.23 is adopted to establish the requirements identified in the Employer Testing Bond. The bond form is currently under review by the Department of Justice and information related to the bond approval will be provided in the Final Statement of Reasons.

DEPARTMENTAL DOCUMENTATION SUPPORTING  
GOVERNMENT CODE SECTIONS 11346.2(b)(3) THROUGH (b)(5)

*Studies, Reports or Documents - Gov. Code Sec. 11346.2(b)(3)*

- No technical, theoretical or empirical studies, reports or documents were relied upon in this proposed action.

*Reasonable Alternatives and Department's Response – Gov. Code Sec. 11346.2(b)(4)(A)*

- No alternatives were presented that would be as effective.

Initial Statement of Reasons  
Employer Testing Program

*Reasonable Alternatives That Would Lessen Any Adverse Impact on Small Business – Gov. Code Sec. 11346.2(b)(4)(B)*

- No alternatives were presented that would lessen any adverse impact on small business.

*Evidence Supporting Determination of No Significant Adverse Economic Impact on Business – Gov. Code Sec. 11346.2(b)(5)*

- The proposed regulatory action will not have a significant adverse economic on businesses. These provisions are largely to ensure compliance with federal rules and employer testers are already familiar with many of the provisions.

ECONOMIC AND FISCAL IMPACT DETERMINATIONS

*Cost or Savings To Any Other State Agency*

- None.

*Other Non-Discretionary Cost or Savings to Local Agencies*

- None.

*Costs or Savings in Federal Funding to the State*

- None.

*Cost Impact on Representative Private Persons or Businesses*

- Cost Impact on Representative Private Persons or Businesses: The department is not aware of any costs impacts related to the provisions identified in this proposed action. There are no fee increases to the examiners, employers, administrators or the state, however, examiners should expect costs related to securing a bond. The department does not anticipate the cost of the bond would be prohibitive for applicants

*Effect on Housing Costs*

- None.

*Local Agency/School District Mandates*

- The proposed regulatory action will not impose a mandate on local agencies or school districts, or a mandate that requires reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

*Small Business Impact*

- This proposed action is unlikely to impact small business. If an affected small business is impacted, the department anticipates the impact will be minimal.

## ECONOMIC IMPACT ASSESSMENT

In accordance with Government Code section 11346.3(b), the department has conducted an economic impact assessment and has made the following determinations:

- *Creation or elimination of jobs within the state*

While this action implements federal rules related to examiner certifications, it also requires an examiner to lose certification if he or she falls below the required number of tests. This action does implement a recertification process and examiners have been complying with the federal rules for several years, therefore, the department does not anticipate that this action will create or eliminate jobs in California.

- *Creation of new businesses or the elimination of existing businesses within the state*

This proposed action does not have a significant impact on testers other than the requirement that the employer and administrator is required to verify an examiner has met the certification requirements. The employer is also required to submit a bond as part of the application process, however, the department does not believe that the cost of securing a bond would be so costly that it would have a negative impact on the business. Therefore, the department does not anticipate that this action will create new businesses or eliminate existing businesses within California.

- *Expansion of businesses currently doing business within the state*

This proposed action does not have a significant impact on testers other than the requirement that the employer and administrator is required to verify an examiner has met the certification requirements. The provisions being adopted in this action largely implement federal requirements. The department does not anticipate this action will expand businesses currently doing business in California.

- *Benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment*

This action will benefit the welfare of California residents and worker safety by ensuring commercial drivers are tested appropriately and by creating a testing process that decreases instances of fraud that could lead to an unqualified driver being issued a commercial driver's license.