

OFFICE OF THE DIRECTOR  
DEPARTMENT OF MOTOR VEHICLES  
P.O. BOX 932328  
SACRAMENTO, CA 94232-3280



## **TITLE 13: DEPARTMENT OF MOTOR VEHICLES**

### **NOTICE IS HEREBY GIVEN**

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, Title 13 of the California Code of Regulations, relating to the Employer Testing Program.

### **PUBLIC HEARING**

A public hearing regarding this proposed regulatory action is not scheduled. However, a public hearing will be held if any interested person or his or her duly authorized representative requests a public hearing to be held relevant to the proposed action by submitting a written request to the contact person identified in this notice no later than 5:00 p.m., fifteen (15) days prior to the close of the written comment period.

### **DEADLINE FOR WRITTEN COMMENTS**

Any interested party or his or her duly authorized representative may submit written comments relevant to the proposed regulations to the contact person identified in this notice. All written comments must be received at the department no later than 5:00 p.m., **June 18, 2018**, the final day of the written comment period, in order for them to be considered by the department before it adopts the proposed regulation.

### **AUTHORITY AND REFERENCE**

The department proposes to adopt these regulations under the authority granted by Vehicle Code section 1651, in order to implement, interpret, or make specific Vehicle Code sections 12804.9 and 15250, and Part 383 of Title 49, Code of Federal Regulations.

### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

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.

Article 2.1 establishes rules for enrolling in the testing program, including the submission of drive test routes, issuance of certificates of driving skill, record keeping requirements, and identifying the roles and responsibilities of employers, administrators, authorized representatives, and examiners participating in the program.

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.

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.

### **CONSISTENCY AND COMPATIBILITY WITH STATE REGULATIONS**

During the process of developing these regulations, the department has conducted a search of any similar regulations on the topic of the issuance of third party testing of commercial drivers and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

### **COMPARABLE FEDERAL STATUTES OR REGULATIONS**

This proposed action adopts the federal rules as they relate to the employer testing program. While some of the provisions in this action duplicate federal law, the department has determined that the duplication is necessary to satisfy the clarity standard of Government Code section 11349.1(a)(3). The duplication will allow the interested party to have a single source of information related to the employer testing program. This duplication will alleviate the need for the potential applicant to have to reference several sources to identify rules related to California's third party testing program and the examiner certification process.

There are no other state regulations related to the employer testing program or the examiner certification process.

### **DOCUMENTS INCORPORATED BY REFERENCE**

The following documents are incorporated by reference:

- Certificate of Driving Skill (DL170ETP, Rev. 10/2017)
- Employer Testing Program Application for Employer Number (DL520ETP, Rev. 10/2017)
- Employer Testing Program Agreement (DL520B ETP, Rev. 10/2017)
- Employer Testing Program Surety Bond (DL 524 ETP, Rev. 10/2017)
- Employer Testing Program Commercial Driving Performance Evaluation Route and Directions (DL814ETP, Rev. 10/2017)
- Employer Testing Program Commercial DPE Maneuver Checklist (DL807ETP, Rev. 10/2017)
- Employer Testing Program Examiner Driver Testing Log (DL 819 ETP, Rev. 10/2017)
- Notification of Commercial Skills Test Schedule (OL 810, NEW 10/2017)
- Employer Testing Program Examiner Application (DL811ETP, Rev. 10/2017)

- Employer Testing Program Refresher Training Request – Examiner (DL 818 ETP, Rev. 10/2017)
- Request for Live Scan Service form, DMV 8016 (Rev. 11/2011)
- Employer Testing Program Voluntary Cancellation Request (DL 520C ETP, Rev. 10/2017)
- Employer Testing Program Request for Reactivation Employer Number (DL 817 ETP, Rev. 10/2017)

These documents will not be published in the California Code of Regulations because it would be impractical and cumbersome to do so; however, the documents are readily available to interested parties by contacting the department representative identified below.

### **Economic and Fiscal Impact Determinations**

The department has made the following initial determinations concerning the proposed regulatory action:

- *Cost or Savings to Any State Agency:* None.
- *Other Non-Discretionary Cost or Savings to Local Agencies:* None.
- *Costs or Savings in Federal Funding to the State:* None.
- *Cost to any local agency or school district requiring reimbursement pursuant to Gov. Code section 17500 et seq.:* None.
- *Effects on Housing Costs:* None.
- *Significant Statewide Adverse Economic Impact Directly Affecting Businesses:* None. The proposed adoptions will require employers to verify an examiner's certification prior to allowing the examiner to conduct drive tests.
- *Cost Impact on Representative Private Persons or Businesses:* The department is not aware of any costs impacts that a representative person or business would necessarily incur in reasonable compliance related to the provisions identified in this proposed action. There are no fee increases to the examiners, employers, administrators or the state, however, employers should expect costs related to securing a bond as part of the application process. The department does not anticipate the cost of the bond would be prohibitive for applicants.
- *Small Business Impact:* There might be a minimal impact to small businesses.

### **Results of the Economic Impact Statement**

The department has made the determinations that this proposed action will not impact the creation or elimination of jobs within the state, the creation of new businesses or the elimination of existing businesses within the state, or the expansion of businesses currently doing business within the state

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.

### **PUBLIC DISCUSSION OF PROPOSED REGULATIONS**

A pre-notice workshop, pursuant to Government Code section 11346.45, is not required because the issues addressed in the proposal are not so complex or large in number that they cannot easily be reviewed during the comment period.

### **ALTERNATIVES CONSIDERED**

The department must determine that no reasonable alternative considered by the department or that has otherwise been identified and brought to the attention of the department would be more effective in carrying out the purpose for which the action is proposed, or would be effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

### **CONTACT PERSON**

Any inquiries or comments concerning the proposed rulemaking action may be addressed to:

Randi Calkins, Regulations Analyst  
Department of Motor Vehicles  
Legal Affairs Division  
PO Box 932382, MS C-244  
Sacramento, CA 94232-3820

Any inquiries or comments concerning the proposed rulemaking action requiring more immediate response may use:

Telephone: (916) 657- 8898  
Facsimile: (916) 657-6243  
E-Mail: [LADRegulations@dmv.ca.gov](mailto:LADRegulations@dmv.ca.gov)

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

Shelly Johnson Marker, Chief of Staff  
Department of Motor Vehicles  
Telephone: (916) 657-6469

### **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The department has prepared an Initial Statement of Reasons for the proposed regulatory action, and has available all the information upon which the proposal is based. The contact person identified in this notice shall make available to the public upon request the Express Terms of the proposed regulatory action using underline or italics to indicate additions to, and strikeout to indicate deletions from the California Code of Regulations.

The contact person identified in this notice shall also make available to the public, upon request, the Final Statement of Reasons and the location of public records, including reports, documentation and other materials related to the proposed action. In addition, the above-cited materials (the Notice of Proposed Regulatory Action, the Initial Statement of Reasons, and Express Terms) may be accessed at <http://www.dmv.ca.gov/portal/dmv/detail/about/lad/regactions>.

#### **AVAILABILITY OF MODIFIED TEXT**

Following the written comment period, and the hearing if one is held, the department may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the fully modified text, with changes clearly indicated, shall be made available to the public for at least 15 days prior to the date on which the department adopts the resulting regulations. Request for copies of any modified regulations should be addressed to the department contact person identified in this notice. The department will accept written comments on the modified regulations for 15 days after the date on which they are first made available to the public.