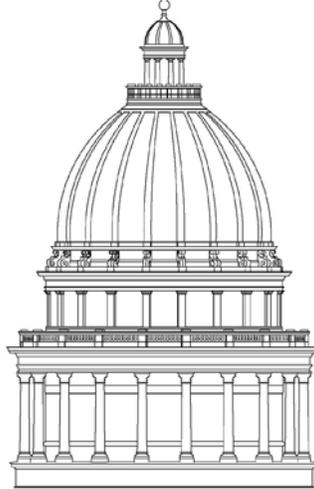


REPORT TO THE
UTAH LEGISLATURE

Number 2010-06



**A Performance Audit of
The Driver License Division**

May 2010

Office of the
LEGISLATIVE AUDITOR GENERAL
State of Utah



STATE OF UTAH

Office of the Legislative Auditor General

315 HOUSE BUILDING • PO BOX 145315 • SALT LAKE CITY, UT 84114-5315
(801) 538-1033 • FAX (801) 538-1063

Audit Subcommittee of the Legislative Management Committee

President Michael G. Waddoups, Co-Chair • Speaker David Clark, Co-Chair
Senator Patricia W. Jones • Representative David Litvack

JOHN M. SCHAFF, CIA
AUDITOR GENERAL

May 18, 2010

TO: THE UTAH STATE LEGISLATURE

Transmitted herewith is our report, **A Performance Audit of the Driver License Division** (Report #2010-06). A digest is found on the blue pages located at the front of the report. The objectives and scope of the audit are explained in the Introduction.

We will be happy to meet with appropriate legislative committees, individual legislators, and other state officials to discuss any item contained in the report in order to facilitate the implementation of the recommendations.

Sincerely,

A handwritten signature in black ink that reads "John M. Schaff". The signature is stylized and cursive.

John M. Schaff, CIA
Auditor General

JMS/lm

Digest of A Performance Audit of the Driver License Division

The Driver License Division (DLD) is tasked with licensing both regular and commercial vehicle drivers while ensuring that driving standards are uniformly enforced through the state's 26 field offices. In addition, the DLD monitors all third-party testers who administer the commercial driver license (CDL) exam. This report reviews the oversight which the DLD has over the third-party tester program and other select policies and procedures which govern the DLD's actions.

Improper CDL Examinations are Occurring. During the audit we observed improper CDL examinations, which had the appearance of fraud, and the lack of necessary policies to oversee third-party tester activities. For example, a third-party tester did not administer a CDL test as scheduled. But, the driver received his CDL with test results referencing the scheduled date and time, signed by the third-party tester. The risk associated with these findings is substantial, because proper testing helps determine whether CDL operators possess the skills required to safely operate commercial vehicles. It is imperative that the DLD react swiftly and strictly to third-party testers who violate laws and policies. Given the magnitude of the implications of improper testing, we find the DLD's incomplete response to our observations to be insufficient. In addition to the safety concerns associated with improper testing, the State faces litigation and potential liability if unqualified CDL operators cause accidents related to improper CDL examinations that occurred because the state lacked necessary policies overseeing third-party tester activities.

Policies for Third-Party Tester Oversight Activities Are Needed. The DLD lacks policies for managing the third-party tester program. Methodology is needed to select third-party testers for observation. For example, there is no methodology in policy to require a certain number of covert observations, nor is there a standard for how often a third-party tester should be monitored. Also, document review and recordkeeping policies are needed. Finally, the DLD needs policies to provide clear guidance on disciplinary action for third-party testers in order to deter fraudulent testing that appears to be occurring.

Limits on Utah's CDL Program Are Needed for Better Program Management. Compared to other states, Utah's CDL program may be too large. In Utah, two CDL coordinators manage over 300 individual third-party testers, while other states we reviewed manage far less. In other words, Utah could reduce the number of third-party testers. In addition, during the

Chapter I: Introduction

Chapter II: Oversight of Third- Party Testers Needs to Improve

**Chapter III:
Some DLD Policies
Need Improvement**

2009 fiscal year, 73 individual third-party testers administered less than 6 CDL exams during the year which seems insufficient to maintain testing skills. To reduce the size of the program for better program management, the DLD could impose a testing standard requiring every third-party tester to administer a minimum number of tests each year. DLD management could also require third-party testers to pay an annual fee and post a bond to cover the cost of retesting drivers in questionable testing situations.

Updated Eye Exam Policy Clarifies Testing Procedure. We visited five different field offices and observed numerous eye exams being performed. Although the examiners appeared to administer correct eye tests, we had a difficult time knowing whether the exam followed policy. The difficulty came because the DLD's Visual Acuity policy was vague in that it did not properly explain how to determine if someone passes the eye test. Within a few weeks of our observations, the DLD introduced a new, clearer policy instructing examiners how to consistently administer the test and what they should observe for a passing score.

Unclear Policy Causes Inconsistent Use of Translation Dictionaries. One DLD policy we reviewed revealed an inconsistent application of the policy that allows that use of an electronic translation dictionary during the knowledge test. Two out of six field offices we contacted allow the use of an electronic translation dictionary; however, four offices told us that it was prohibited. The policy is unclear; the DLD should clarify in policy if an electronic translation dictionary may be used during the knowledge test.

**Chapter IV:
Peace Officers'
Increased
Absenteeism At
Administrative DUI
Hearings Is
Concerning**

Peace officer absenteeism at DLD DUI hearings has increased during the last four fiscal years. When peace officers fail to attend the hearings, the DLD is required to take no action on the driver license. To take no action means the license is not revoked or suspended. The driver may continue to operate a motor vehicle. Our concern is that without a peace officer's presence, there is no hearing and the potentially dangerous driver continues to drive under a valid license until a court hears the case, which could be several months. We found that when peace officers attended the hearings in January 2009, 82 percent of those cases resulted in some form of action taken against the driver. We believe this demonstrates the need for peace officer attendance at DUI hearings.

**Chapter V:
DLD Adjusting to
Recent Changes in
Legislation Affecting
Identity and Lawful
Presence Verification**

When recent changes to Utah law were implemented, on January 4, 2010, the division came under public and media scrutiny because wait times in the field offices spiked. However, as examiners and offices have adjusted to the new system and workload, average wait times at the DLD field offices have been decreasing.

REPORT TO THE UTAH LEGISLATURE

Report No. 2010-06

A Performance Audit Of The Driver License Division

May 2010

Audit Performed By:

Audit Manager	Darin Underwood
Audit Supervisor	Deanna Herring
Audit Staff	David Apple

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Chapter I

Introduction

This audit focuses on select policies and procedures that govern Utah's Driver License Division (DLD). Located within the Utah Department of Public Safety, the DLD's mission "is to license and regulate drivers in Utah and promote public safety." Throughout the state of Utah, 26 field offices serve the public by issuing driver licenses and maintaining the integrity of driving standards required by state and federal laws. Audit questions concerning oversight of Utah's commercial driver license (CDL) program and consistent application of policies and procedures throughout the state field offices are addressed in this report.

During 2009, the DLD issued over 458,000 driver licenses, 50,549 identification cards, and 42,186 driver privilege cards (which are issued to non-U.S. citizens). In addition to testing and licensing drivers, the DLD conducts administrative hearings for driving infractions and enforces positive identification guidelines to ensure that those seeking Utah licenses have proper documentation. The DLD also administers the state's CDL program, which includes oversight of third-party testers. Third-party testers are private individuals or companies that are certified to test applicants seeking a CDL.

DLD Enforces Operator Standards

All drivers who wish to obtain a regular (Class D) license, which allows the licensee to drive all vehicles except commercial vehicles or motorcycles in Utah, are required to complete a variety of steps depending on their driving status, legal status, and medical condition. DLD examiners administer the eye tests and all driver knowledge tests.

Beginning January 2010, under First Substitute Senate Bill 81, Senate Bill 40, (S.B. 81, passed during the 2008 General Session of the Utah Legislature and S.B. 40 passed during the 2009 session) and the federal REAL ID Act, all DLD field offices are required to scan all documents proving identity and lawful presence for any individuals wishing to obtain a new, renewed, or duplicate license. Persons who are not U.S. citizens, U.S. nationals, or permanent resident aliens

Recent legislative amendments require the DLD to scan all documents verifying lawful presence.

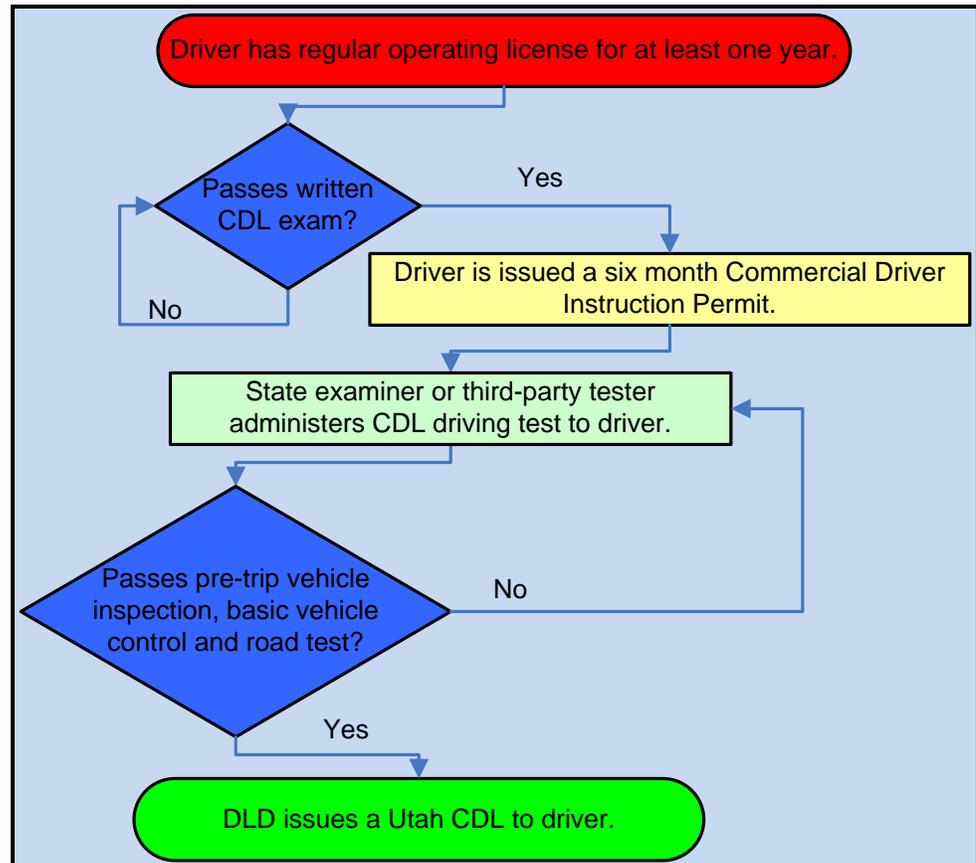
(including undocumented immigrants) are required to submit additional documentation to obtain a license or a driving privilege card. We conducted a preliminary review of the effect of these new requirements on the DLD and discuss the findings in Chapter V.

DLD Administers the CDL Program

The type of CDL the DLD will issue a driver depends on the type of vehicle operated and cargo transported. There are three types of CDL licenses (Class A, B, and C) and additional license endorsements can be obtained from the DLD. Figure 1.1 depicts the procedure for drivers to obtain a Utah CDL.

Figure 1.1. Process to Obtain a Utah CDL. A CDL applicant needs to have a valid regular license (from Utah or another state) and at least one year of experience as a licensed driver before applying for a Utah CDL. After passing a written and driving test, the applicant can obtain a Utah CDL.

Drivers are required to pass a written and driving test before they are issued a valid CDL.



Upon successful completion of the written test, the driver is issued a Commercial Driver Instruction Permit (CDIP) which is valid for six months. The CDIP allows the driver to operate a vehicle of the class noted on the permit (i.e. Class A, B or C); a licensed driver holding a CDL of the same class (or higher) must occupy the seat next to the driver. A CDIP holder can then take the driving skills tests from a state examiner at a field office or from a third-party tester (our audit focuses on the third-party testers and not the state examiners). The CDL test consists of the following three parts:

Pre-Trip Vehicle Inspection. The operator is required to demonstrate how to perform a pre-trip inspection of his or her commercial vehicle. Four different testing forms exist, and the operator is not allowed to choose which form he or she will be tested on. Depending on the testing vehicle class and the form selected to administer the test, an operator is required to properly inspect from approximately 25 to 70 various items on the vehicle.

Basic Vehicle Control. This portion of the CDL test requires an operator to execute three essential maneuvers with the testing vehicle. All operators, regardless of their testing vehicle, cannot make more than 12 errors to pass this portion of the CDL test.

Road Test. The road test requires the operator to safely drive his or her vehicle in a variety of traffic situations. Some situations could include various turns, curves, crossings, grades, and roads. Every third-party tester has one or more approved testing routes they are required to follow when testing a CDL operator.

Audit Scope and Objectives

To ensure that Utah's CDL third-party tester program is being effectively managed, we were asked to evaluate the CDL program. In addition, we were asked to review select DLD policies. Specifically, this report addresses two audit objectives:

- Review the effectiveness of CDL third-party testing and verify that proper CDL testing is occurring.

The audit requestor had questions concerning the oversight of Utah's CDL program and the consistent applications of policies throughout the state.

- Determine if select policies and procedures are applied consistently among field offices throughout the state.

Chapter II outlines the current oversight of Utah's CDL third-party testing program and the need for oversight and policy improvements. Chapter III discusses some inconsistent policy application and needed improvements. Chapter IV focuses on peace officer attendance at administrative driving under the influence (DUI) hearings and Chapter V discusses the effects of implementing federal and state legislation affecting the verification of identity and lawful presence.

Chapter II

Oversight of Third-Party Testers Needs to Improve

The Utah Department of Public Safety's, Driver License Division (DLD) administers the commercial driver license (CDL) program. In order to receive a CDL in Utah, a person may be tested by either one of the DLD's 24 CDL examiners or one of the state's 303 individual third-party testers. In 2009, 93 percent of CDL examinations were administered by third-party testers. This portion of the audit focuses on third-party testers.

During the audit we observed improper CDL examinations occurring, which had the appearance of fraud, and the lack of necessary policies to oversee third-party tester activities. The risk associated with these findings is substantial, because proper testing helps determine whether CDL operators possess the skills required to safely operate commercial vehicles. We believe it is imperative that the DLD react swiftly and strictly to third-party testers who violate laws and policies. Also, limits on Utah's use of third-party testers in the CDL program are needed for better program management.

In recent years, there have been media reports concerning terrible automobile accidents involving commercial trucks. For example, in 2003, a Utah-licensed CDL driver caused an accident, killing a family of five in Pennsylvania. The driver received his license from a third-party examiner who was criminally indicted for fraudulently issuing CDLs. We believe Utah's CDL program must be strictly structured and administered. The utmost dedication to safety through appropriate testing and licensing should be the program's focus. This must also include proactive disciplinary procedures for third-party testers who do not follow the rules and regulations. The DLD also needs to improve their response to our audit findings in order to maintain public safety and avoid potential liability to the state.

Unqualified CDL operators are hazardous to other people on the road.

Improper CDL Examinations Are Occurring

A third-party tester, who according to *Utah Code* 53-3-407 may include any authorized person, agency, private driver training facility, etc., may administer the skills test necessary for a person to receive a Utah CDL based on federal and state laws. We conducted covert observations of third-party testers administering examinations and found improper testing practices. Given the magnitude of the implications of improper testing, we find the DLD's incomplete response to our observations to be insufficient. We also conducted a document review and found some concerns such as third-party testers testing two drivers at the same time and the inappropriate use of the CDL calendaring system.

The Third-Party Tester Program Is Regulated by Several Bodies of Authority

Title 49 Part 383.75 of the *Code of Federal Regulations* sets forth the federal regulations for third-party testing. Title 53, chapter 3, of the *Utah Code* is the Uniform Driver License Act with part four regulating Utah's commercial driver license program. *Utah Administrative Code* R708-21 establishes the standards and procedures for Utah's third-party testers.

To ensure that proper testing occurs, the DLD is required by the Federal Motor Carrier Safety Administration (FMCSA) to provide oversight to third-party testers by conducting an on-site inspection at least once a year to every third-party tester's facility. In addition, according to *Utah Administrative Code* R708-21-3, third-party testers are required to allow the Federal Highway Administration and the DLD to conduct random examinations, inspections, and audits without prior notice.

When a third-party tester signs the testing document after giving an examination, his or her signature is a certification under penalty that the form is filled out truthfully and correctly. If a third-party tester is caught forging documents or fallaciously passing a CDL driver, he or she may face criminal and civil charges, as well as administrative action. In addition, the driver being allowed to pass may have to retake the CDL examination.

Third-party testers can be subjected to random examinations, inspections, and audits of their facilities.

Figure 2.1 explains *Utah Code* and *Administrative Rule* that applies to fraudulent CDL testing:

Figure 2.1 Fraudulent CDL Testing Can Result in Both Criminal and Administrative Action.

Utah Criminal Law:		
76-8-414	Recording false or forged instruments	3rd degree felony, five years imprisonment, \$5,000 fine
76-8-502	Falsification or inconsistent material statements	2nd degree felony, 15 years imprisonment, \$10,000 fine
76-8-105	Receiving or soliciting bribes	2nd or 3rd degree felony, 15 years imprisonment, up to \$10,000 fine
Utah Administrative Code R708-21:		
DLD may cancel certification on several grounds, including:		
—	Failure to comply with third-party tester agreement	
—	Falsification of any records or information relating to third-party testing program	
—	Commission of any act that compromises third-party testing program	

A cancellation of a third-party certification varies in length of time, depending on the number of infractions by a third-party tester and the discretion of the DLD.

Improper Testing Practices Observed With Insufficient Response from the DLD

During the audit, we observed 10 CDL examinations being conducted. Nine examinations were observed covertly, and one was performed overtly where our presence was known. In four of the nine covert observations, we identified problems with the testing procedures. However, in these four covert observations the third-party testers still passed the drivers, who then received a Utah CDL, despite the following concerns:

1. One third-party tester was not observed giving a test at the documented date and time.
2. Another third-party tester did not administer a road test on an approved route.
3. Two CDL exams were performed at the same time; the exam results were not properly recorded, and at least one portion of the exam did not follow the approved testing route.

Four of the nine CDL covert observations identified problems in the testing procedures.

4. A third-party tester claims a test was given when only a practice was observed.

We selected the 9 tests to be observed by statistically analyzing the pass/fail rates of all third-party testers for fiscal year 2009. The intent was to identify testers who had exceptionally high pass rates. Our statistical analysis identified 52 individual third-party testers with high pass rates. The 9 we chose were selected based on their test schedules during the audit (some third-party testers were not giving tests during the observation period). Therefore, we observed 17 percent of the identified individual third-party testers. We then compared our observations (including test times and test results) with the third-party testers' results submitted to the DLD on the CDL testing form.

The four concerning observations and the DLD's actions in response to the observations are discussed below:

1. **Third-party tester was not observed giving a test at the documented date and time.** We observed a third-party tester who submitted incorrect paperwork claiming to have administered a test at a documented time and testing site. However, we were at the testing location with a CDL coordinator when the test was supposedly given. After waiting an hour, we documented that neither the third-party tester nor the applicant to be tested showed up. The CDL coordinator then called the third-party tester who informed us that he was at home (and therefore not administering a test). The following day, the driver received his CDL using the falsified test results that were signed by the third-party tester.

DLD's Response: The DLD reports to us that they contacted the third-party tester and informed him of the observation. The third-party tester explained that he gave the test earlier in the day. However, there is no evidence of this because the test time documented on the score sheet was the observed time when the third-party tester did not show up. The DLD said they informed the tester that this practice was not appropriate and that they would observe him in the future. The DLD told us they observed this tester again about a month later and he did indeed perform the test as scheduled. However, there is no record of this visit in the tester's CDL file. If the DLD does not document this observation, there is no evidence of its occurrence. This

The third-party tester did not administer the test at the documented date and time.

makes future action against this third-party tester (if necessary) difficult. The third-party tester's file needs to reflect the findings in all observations.

2. **Third-party tester did not administer road test on approved route.** We observed one third-party tester administer an unauthorized and simplified road test. Every third-party tester has testing routes that have been preapproved by the DLD. These routes contain the testing elements required by *Administrative Code* R708-21-3(E). The road test administered during this particular observation did not assess if the operator could properly change lanes, address stop signs and intersections, or maneuver a vehicle through urban areas.

DLD's Response: The DLD reports to us that they spoke with the third-party tester and informed him of the observation and the problem observed. He responded that he changes his approved routes so the drivers do not know what to expect. DLD states they informed him that all changes in routes must be approved and that he is not authorized to change the route without their knowledge. However this has not been documented in the tester's file which makes it difficult to ensure the inappropriate action has been corrected. As stated above, if the tester were to violate the approved route again, the DLD would not have documentation to justify future disciplinary action.

3. **Third-party tester administered two CDL examinations at the same time, did not properly record testing results, and did not follow the approved testing route.** We observed a third-party tester administering the basic vehicle control portion of the CDL test to two drivers at the same time. During the test, the third-party tester did not have the testing forms on hand to accurately score each driver. Both of these practices are prohibited by the DLD and are expressly discussed during third-party tester training. Also, the drivers did not follow the third-party tester's approved road test route because the basic vehicle segment of the test should have been administered during the middle of the road test (which it was not).

DLD's Response: The DLD reports to us that they spoke with the third-party tester about the incorrect practices. At the time of our

The third-party tester did not test the driver on an approved road test route.

The third-party tester administered two tests at the same time and did not properly record testing results.

Third-party tester was not observed administering a test; auditors only observed drivers practicing at testing site.

discussion with the DLD regarding this tester, in February 2010, the tester had not scheduled another test. However, this was not documented in his CDL file. Again, without documentation in the third-party tester's file, there is no evidence of the DLD's actions to remedy the problem and prevent future problems.

4. **Third-party tester claims to have administered a test when we only observed a practice, and not a test, session.** We observed a driver practicing in the truck yard during the scheduled test time. The operator of the vehicle appeared to have been practicing elements of the basic skills test. However, we did not observe a third-party tester monitoring or scoring the driver from the truck yard, nor did we observe test cones set up to indicate a test course. We were unable to confirm that a test was being administered during the documented time of test.

DLD's Response: The DLD agrees that they did not observe a CDL basic skills test being administered. However, they did observe a driver practicing in the lot. They plan on covertly observing this third-party tester again. Our observation was in October 2009 and the DLD has not observed him since.

The DLD needs proactive disciplinary procedures for third-party testers that violate rules and regulations.

We believe the DLD needs to invoke a more proactive disciplinary procedure for third-party testers who do not adhere to the requirements. As stated above, all four of these third-party testers that we observed did issue CDLs to the drivers despite the incorrect procedures. We believe more covert observations are needed on more third-party testers to ensure proper tests are being given. And if third-party testers are found to have questionable practices, the DLD must respond swiftly and consistently.

The State of Utah and DLD personnel could be held liable if appropriate and consistent action is not taken on questionable third-party testing practices.

Potential Liability Exists for Utah if the DLD Does Not Take Appropriate Action. Because we were concerned with the DLD's response to our observations, we spoke with representatives from Utah's Division of Risk Management. We wanted to know if the state could be held liable when the DLD does not promptly respond to questionable third-party testing practices or grants CDLs to drivers tested by these parties. Risk Management explained that there is a potential risk to the state if the DLD does not have proper policies and procedures for handling questionable third-party tester practices. The DLD must also take appropriate action in a timely and consistent

manner. In addition, if the CDL coordinator is aware of a particular third-party tester's questionable practices and a commercial driver receives a license under that tester, the coordinator could face personal liability if there is an accident. We discuss the DLD's need for appropriate CDL policies later in the chapter. In the next section, we discuss the results of our document review.

Review of CDL Testing Documents Showed Concerns

In addition to observing CDL examinations, we reviewed the DLD's CDL calendaring system. We found the following concerns:

- Documentation showing two tests were administered at the same time by the same third-party tester,
- One third-party tester scheduled 15 CDL tests in a one-hour time period, and
- The CDL testing calendar should be updated.

The DLD utilizes an on-line calendar to track numerous functions relating to scheduled CDL tests given by third-party testers. Third-party testers use the calendar to schedule their examinations. The DLD can evaluate scheduled testing times and see if a driver passed the test. CDL coordinators can also evaluate the type of test administered and the time each test should take.

It is important for third-party testers to properly record test start times on the calendar to allow the DLD a chance to attend the testing session if desired. These times should also match the recorded times on the CDL testing form that is submitted to the DLD field offices for processing driver licenses. If a test is rescheduled, the third-party tester needs to inform the CDL coordinator of the change six hours before the test is administered. Six hours allows the CDL coordinator time to travel to a testing site anywhere in the state if necessary.

Our review of the CDL calendar and hard copy test results identified the following inconsistencies:

- **Hard Copy Review Shows Two Tests Administered at Same Time by Same Third-Party Tester.** In one document review case (comparing the CDL calendar to the hard copy of the administered test), we identified a third-party tester who appears

Problems with the CDL calendaring system were identified during the audit.

Hard copy review revealed two tests being administered at the same time and only taking 15 minutes to administer.

to have given two CDL examinations to different drivers at the same time. In addition, both tests together took only 15 minutes to complete. As discussed previously, testing two drivers at the same time is prohibited. In addition, a properly administered CDL test takes well over an hour to complete.

DLD's Response: The DLD stated the third-party tester contacted them about how the tester had scheduled two tests at the same time. Apparently, the third-party tester was aware of the violation. The DLD reiterated to the third-party tester that there was a violation and told us they plan on covertly observing this tester in the future. However, the DLD did not document our findings in the file.

- **Third-Party Tester Scheduled 15 CDL Tests in One-Hour Time Period.** We reviewed the monthly calendar events and identified a tester who had scheduled 15 CDL examinations in one day from 12:30 -12:45 p.m. After speaking with the third-party tester about this inappropriate use of the calendar, the CDL coordinators said the third-party tester was planning on administering a CDL test to the 15 scheduled drivers during that week but was unsure exactly when and in what order the drivers would show up to the test site. This scheduling practice undermines the CDL coordinators' ability to observe and evaluate third-party testers. If the CDL coordinators cannot track who was tested at what time, then adequate checks cannot be conducted.

DLD's Response: The DLD told us this third-party tester was unfamiliar with the CDL calendaring program. However, even after the DLD spoke with the third-party tester about the issue, the tester made the same mistake again. The DLD said they are going to continue to train the tester on the calendaring program. Again, the DLD did not update the third-party tester's file to reflect the review findings.

- **The CDL Calendar Lacks Analytical Tools for Identifying Questionable Testing.** According to the DLD, their CDL calendaring system came on-line in 2007. They report it is an improvement from their last system, which was merely a spreadsheet where testing information was inserted. The

The CDL calendar allows multiple tests to be scheduled at the same time.

The CDL calendar lacks analytical tools for identifying fraud and other questionable testing practices.

calendar system is now on-line for all third-party testers to utilize. However, it does not appropriately track failed tests.

DLD's Response: The DLD has applied for a \$282,000 federal grant to fund contract programmers and specialists for one year to make improvements to the CDL calendar. Calendar improvements will include software changes, data output accuracy, and CDL skills test reporting to the CDL coordinators which will help alleviate fraud.

The DLD needs to be able to isolate third-party testers who submit questionable paperwork. Although the DLD appears to have an annual reconciliation process, we believe that the DLD needs to routinely, throughout the year, review and compare the calendar to scanned copies of the CDL test forms that have been submitted to local DLD field offices after a driver passes the CDL test.

The DLD lacks processes for systematically comparing the calendar to the test forms. And since their calendar system does not provide analytical tools to identify anomalies between scheduled tests, pass rates, and test results, the DLD will have to manually create a system of review. An improved calendar system should allow the DLD to accurately track failed tests and allow the CDL coordinators to review third-party tester practices for anomalies that may indicate fraudulent examinations.

The DLD Does Have a Criminal Investigation Avenue for CDL Program Violators. We spoke with the Department of Public Safety Investigations Bureau about the services they provide to the DLD. The DLD has administrative power to take action (such as revoking a license) on third-party testers and drivers who violate laws and policies, but for criminal activity, they contact the Investigations Bureau. The bureau conducts an investigation and if they can build a case and find fraud, they will file charges in the appropriate court. According to the bureau, criminal actions have been pursued in the past.

The Department of Public Safety Investigations Bureau can assist the DLD in fraud investigations.

Policies for Third-Party Tester Oversight Activities Are Needed

The DLD needs policies to govern the third-party tester program. As observed throughout the audit, policies directing how the DLD should manage the CDL program are either ineffective or do not exist. We found the CDL program lacks policies in some of the following areas:

- Methodology for selecting when third-party testers should be observed
- Appropriate document review and recordkeeping
- Disciplinary action procedures for third-party testers

Methodology Needed to Select Third-Party Testers for Observation

The DLD should establish a methodology for selecting third-party testers for random observations (which are separate from the third-party tester's annually scheduled audit). As stated earlier, we applied statistical tests to the third-party tester population in order to identify third-party testers whose pass/fail rates were statistically out of the norm. We believe our methodology to be sound as it identified two individual third-party testers who have recently been decertified for fraudulent practices; this methodology also helped identify four additional third-party testers during the audit. Statistical analysis could help the DLD identify third-party testers who exhibit exceptionally high passing rates or possible anomalies. Proper methodology could provide a systematic way for the CDL coordinators to identify third-party testers who should be covertly observed to ensure exams are being administered correctly.

Although the DLD does conduct covert audits, there is no methodology in policy to require a certain number, nor is there a standard for how often a third-party tester should be monitored (apart from the required, announced annual visit). We believe covert observations are essential to ensure proper testing is occurring. The DLD should have a system in place to identify irregularities with third-party tester practices. Ideally, over a period of time, the DLD should covertly observe a large portion, if not all, of the third-party

DLD policies pertaining to CDL program oversight are deficient.

The DLD needs to develop a methodology to select third-party testers for random audits.

testers. Four other states we spoke with: Colorado, Idaho, Nebraska, and Kansas, also conduct covert audits of their third-party testers.

Our recommendation is consistent with the Federal Motor Carrier Safety Administration’s proposed federal rules. We were given a copy of proposed changes to the federal rules governing the national CDL program. Proposed federal rule §384.229 “Skills Test Examiner Auditing and Monitoring,” requires states to adhere to the following procedures:

- (b) At least annually, conduct covert and overt monitoring of examinations performed by State and third-party CDL skills test examiners;
- (c) 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.

Additional guidelines from proposed federal rule §383.75 (5)(iii) include a requirement for states to retest a sample of drivers who were examined by a third-party tester to compare their pass and fail results. This would enable the DLD to determine if recently licensed CDL operators are able to properly and safely operate commercial vehicles. The proposed rules referenced in this report were filed with the *Federal Register* in April 2008 and have yet to be passed. However, we believe the criteria outlined in the report could assist Utah’s CDL program and could soon be federal law.

Document Review and Recordkeeping Policies Needed

As discussed, some of the questionable situations we identified resulted from us conducting a document review and reviewing the CDL calendar. We believe that a third-party tester document review process should be established to identify errors in CDL tests. When an operator passes a CDL test, he or she receives the test documents in a sealed envelope, which is taken to a field office for processing. Meanwhile, the third-party tester enters the driver’s test results into the DLD’s database. The field office ensures that the same test results exist between the hard copy and the database before issuing the CDL license. The hard copy is then scanned into archives. The hard copy

Proposed federal rules list additional rules for monitoring states’ CDL programs.

We recommend that the DLD conduct document reviews to ensure that proper CDL tests are being recorded.

The DLD needs to improve their documentation of covert audits and provide feedback to third-party testers.

contains information such as the testing times. We believe the DLD should review these forms periodically to ensure there are no irregularities, such as the one discussed previously where one third-party tester appeared to administer two tests in 15 minutes. Again, since the DLD does not have an analytical software package to identify testing anomalies, the DLD will have to conduct a manual test for irregularities.

We also found that better records documenting observations of third-party testers need to be kept regardless of whether problems were identified. In addition, once a covert observation has taken place, the CDL managers need to promptly furnish feedback to the third-party tester, whether positive or negative, and quickly take any disciplinary action. It is important for third-party testers to know the DLD has a presence in the state and can observe testers at any time. There also needs to be documentation in the third-party tester's file summarizing the observation made and any action taken.

The DLD will examine test records for testing anomalies during the annual audit, but not periodically throughout the year. In addition, files are not updated when covert observations take place, unless there is action to be taken. Without documenting when every observation occurs, the DLD cannot ensure that each third-party tester has been observed. Furthermore, there is no record of the testers who have been observed, aside from the annual audit. Policies are needed guiding a periodic review of test records and systematic documentation in the files.

Policies Must Provide Clear Guidance on Disciplinary Action

The DLD needs to establish guidelines for third-party tester disciplinary actions. In the past two years, the DLD has administratively removed two individual third-party testers for fraudulent activities. The first tester was caught accepting bribes from an undercover investigator who was hired by the DLD. This tester was guilty of bribery and falsification of test results, and the DLD chose to notify all drivers who were tested by him that they would be retested. A second tester was removed because the CDL managers covertly observed his testing area during a scheduled test. No one showed up for the exam, and paperwork was submitted declaring that a test did take place at the scheduled date and time. However, the

DLD chose not to retest the drivers that tested under this third-party tester.

We are concerned that the drivers who tested under this third-party tester were not retested. If third-party testers fail to correctly test drivers for a CDL, there is a great risk that those drivers do not properly know how to drive a commercial vehicle. This poses a risk to everyone. When we questioned the DLD why they did not retest drivers who licensed under this third-party tester, the DLD responded that the tester admitted to the fraud but claimed it was the first time he had ever done it. Without evidence of any other fraudulent tests, the DLD chose not to retest the drivers licensed under this third-party tester. We found this response alarming, but we found no policies instructing when drivers are to be retested. We believe a policy is needed requiring a consistent application of disciplinary actions for third-party testers who are suspected of fraudulently giving tests.

Finally, guidelines are needed to assist the CDL coordinators in properly determining what disciplinary or removal actions are needed, depending on the infraction. Since improper testing can range from a third-party tester forgetting to mark a section of the test to a third-party tester accepting bribes and falsifying information on examinations, the DLD needs to adaptively address these problems and rank them in order of severity, with a corresponding sanction to match. The proposed federal rules affirm that the state must take prompt and appropriate remedial action against a third-party tester who fails to comply with state or federal standards for the CDL testing program, or with any other terms of the third-party contract. We believe the DLD should not wait for the proposed federal rules to be finalized to make the necessary changes. Third-party testers who do not correctly administer CDL examinations create a public danger and potential liability for the state.

Limits on Utah’s CDL Program Are Needed for Better Program Management

At this time of budgetary constraints, we do not expect the CDL program to expand its levels of administrative support. However, because of the large number of individual third-party testers compared to CDL coordinators, we believe program management is deficient. We believe management is challenged because of the large number of

Consistent disciplinary action is necessary so third-party testers know the consequences of fraudulent testing.

third-party testers overseen by the small number of CDL coordinators. Fewer third-party testers and a minimum number of annual tests given by third-party testers are needed. In addition, to help with the cost of regulating the CDL program, Utah should require third-party testers to pay a fee and be bonded.

Fewer Third-Party Testers and a Minimum Number of Annual Tests Are Needed

Our review found that Utah’s third-party tester program appears to be too large for ideal program management. After we observed questionable CDL examinations being given, we decided to review the size of Utah’s CDL program compared to the number of individual third-party testers to see if there is enough oversight in relation to other states. Also, Utah does not require third-party testers to give a minimum number of tests per year, yet all testers use program resources.

Two CDL coordinators oversee more than 300 individual third-party testers. We found that Utah’s program has much less management oversight than other states’ programs. Figure 2.2 compares the ratio of program managers to individual third-party testers in several states.

The number of third-party testers compared to regulatory staff in Utah is large when compared to other states.

Figure 2.2 State Comparison of CDL Programs Shows Utah’s Program May Be Too Large. All the states we contacted have fewer individual third-party testers than Utah has.

State	Number of Third-Party Testers*	Third-Party Tester Oversight Staff	Ratio of Staff to Third-Party Tester
Kansas	2**	3	0.67:1
Nebraska	76	5	15:1
Oregon	35	2	18:1
Washington	120	4	30:1
Idaho	70	1	70:1
Colorado	385	3	128:1
Utah	303	2	152:1

* This is the number of individual third-party testers, not driver training facilities.
 **Kansas only has two third-party testers and 46 state examiners.

As shown in the figure, Utah’s ratio of program management staff to third-party testers is well below other states. To better manage

Idaho’s third-party tester program, the state has 45 locations or regions where testers are positioned. Idaho’s drivers’ license division monitors the number of tests each examiner gives per year; if a tester performs fewer than 24 tests a year, the division determines whether the tester should be moved to another area or be decertified.

In Kansas, because of past fraud concerns, there are only two third-party testers (and 46 state examiners). Due to the small number of third-party testers, the Kansas CDL coordinator is able to conduct a training refresher course every six weeks and meet with the two third-party testers and 46 state examiners about eight times a year.

In addition to keeping the ratio of staff to third-party testers in check, other states require a third-party tester to give a minimum number of CDL tests each year in order to maintain certification. This is shown in Figure 2.3.

Figure 2.3 Requiring a Minimum Number of CDL Tests Also Controls Program Size. To reduce the number of required annual visits (and other program management functions), other states have imposed a minimum number of tests per year for third-party testers.

State	Minimum Number of Tests per Year
Idaho	24
Oregon	12
Washington	12
Nebraska	6
Colorado	4
Kansas	None
Utah	None

Other states require third-party testers to administer a certain number of tests per year.

By not requiring a third-party tester to conduct a minimum number of CDL exams each year, we believe the DLD may be spreading itself too thin for proper oversight, with little to no benefit. Proper oversight, according to federal law, requires all 303 individual third-party testers to receive an annual on-site inspection. These inspections consume DLD resources and are time consuming.

We believe that because Utah’s third-party tester program is so large, the CDL coordinators spend much of their time conducting the

annual inspections and do not have time to perform enough covert audits. Covert audits provide a great benefit to the program because they allow the CDL coordinators to ensure third-party testers are properly conducting tests since the coordinators arrive unannounced and are concealed. Being undercover provides the best way to witness indicators of fraud.

We reviewed the number of CDL examinations Utah’s third-party testers performed in fiscal year 2009 to see how many tests are given by each. The results are shown in Figure 2.4.

Figure 2.4 Twenty-Four Percent of Third-Party Testers Conducted Fewer than Six Tests in Fiscal Year 2009. 303 individual third-party testers were certified to administer CDL tests in fiscal year 2009.

Number of Tests Administered in FY 2009	Count of Third-Party Testers	Percentage
0 to 5	73	24%
6 to 10	18	6
11 to 15	18	6
<u>16 +</u>	<u>194</u>	<u>64</u>
Total	303	100%

73 (or 24 percent) of third-party testers administered fewer than six exams in the 2009 fiscal year.

Thirty percent of the individual third-party testers performed 10 or fewer exams during the year. Of the 73 third-party testers who performed five or fewer exams during the year, 52 of them performed no exams at all. Creating a minimum testing requirement would reduce the size of the program and remove the third-party testers who gave a limited number of tests during the year.

One concern with not setting a minimum number of tests is the possibility of declining test standards. If a third-party tester rarely performs examinations, there is concern that his or her skills are not as sharp as they should be. In the November 2009 federal audit of Utah’s CDL program, the Federal Motor Carrier Safety Administration also recommends that Utah consider requiring third-party and state testers to perform a minimum number of CDL skills tests annually to retain their certification.

Utah Should Require Third-Party Testers to Pay a Fee and Be Bonded

Another avenue available to Utah that we observed in other states is to require third-party testers to pay an annual or biannual fee to help fund regulatory costs. Third-party testers should also be required to post a bond to help mitigate the costs when a third-party tester requires administrative or criminal action after engaging in fraudulent testing practices.

Both Nebraska and Colorado require every third-party tester to pay an annual renewal fee to maintain their certification. Colorado requires all third-party tester companies to pay an initial fee of \$300 per company and a \$100 fee for every individual third-party tester employed by the company. Colorado's annual renewal fee for a third-party tester license is \$100 per company and \$50 per third-party tester. In Nebraska, every third-party tester company must pay a \$100 biannual fee to be eligible to administer CDL skills tests.

These fees help offset the costs of regulating the CDL program while also possibly reducing the number of third-party testers to more manageable levels. Some third-party testers may not want to pay a fee if they do not perform a worthwhile number of tests each year. If Utah required similar fees, perhaps \$100 per testing company and \$50 per individual third-party tester, around \$31,000 per year could be collected to help pay for regulatory costs of the program.

Bonding Can Provide Revenue to Fund Retesting and Act as a Deterrent. In Michigan, all third-party testers are required to maintain a surety bond for any monetary costs associated with retesting any CDL drivers who were not tested according to the method and criteria prescribed by the state. The principal sum of the surety bond is \$5,000 per third-party tester. The beneficiary of the bond is the state of Michigan and would be used to reimburse the state for any expenses associated with retesting CDL operators.

A bond would be beneficial to Utah, since two individual third-party testers have recently been removed from the Utah CDL program due to fraudulent testing practices; one third-party tester administered 299 tests during 2002 to 2003, and the other third-party tester tested 73 operators in 2007 and 2008. A limited review of third-party tester and driver files shows that most 372 drivers either were retested or

Other states require third-party testers to pay initial and/or renewal fees.

Michigan requires all third-party testers to maintain a surety bond for offsetting the cost of retesting drivers in the case of fraud.

lost their CDL privilege. The DLD fee for a driver to retake a CDL skills test is \$40, but all fees were waived for the retested drivers. The lost revenue associated with the retests was approximately \$15,000, but the true cost of the retesting could have been much higher due to multiple notices sent to each driver by mail and the DLD field office's personnel costs for hearings.

Requiring a bond would be consistent with the proposed federal rule that will require a state to have an agreement with each third-party tester to be bonded. The agreement will require

the third-party tester to initiate and maintain a bond in an amount determined by the State to be sufficient to pay for retesting drivers in the event that the third party or one or more of its examiners is involved in fraudulent activities related to conducting skills testing for applicants for a CDL.

In summary, Utah's CDL program is in need of improved oversight. More covert observations and better document review and recordkeeping will help to reduce the chances of fraudulent testing. Improved and consistently applied policies on disciplinary actions will inform third-party testers of program expectations. Finally, limiting the number of third-party testers could provide for better management, while requiring a fee and bond will help secure the program during situations of fraudulent investigations.

Recommendations

1. We recommend the DLD conduct more covert observations of third-party tester examinations.
2. We recommend the DLD systematically compare the CDL calendar to scanned test forms to ensure proper paperwork is being submitted.
3. We recommend the DLD establish third-party tester oversight policies pertaining to the following activities:
 - Reviewing testing paperwork and the CDL calendar for irregularities

- Keeping more comprehensive records documenting observations of third-party testers
 - Promptly providing feedback to third-party testers after they have been observed conducting CDL examinations
 - Consistently retesting drivers who have been licensed under a third-party tester found to have conducted an improper examination
 - Setting forth disciplinary and removal actions, ranking them in order of severity, with a consistent application of the sanctions
4. We recommend the DLD update and improve the CDL calendar to track failed tests, minimize ambiguity of CDL testing times and improve the statistical oversight tools of the website.
 5. We recommend the DLD control the number of third-party testers in Utah by requiring a minimum number of tests to be conducted annually.
 6. We recommend the DLD require third-party testers to pay an annual fee and post a surety bond to cover the cost of regulating the CDL program and deter improper testing.

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Chapter III

Some DLD Policies Need Improvement

In addition to our review of the commercial driver license (CDL) program, we were asked to review some of the Driver License Division's (DLD) policies and employee discretion in policy application. We were contacted with allegations about inconsistent policy application, specifically concerning eye exams and foreign language assistance. We visited field offices, examined policies, and interviewed employees which provided useful insight into how some DLD policies are applied. Initially we found the DLD's eye exam policy vague. However, during the audit the DLD updated the policy, clarifying testing procedures. We also found that the DLD's policy on the use of an electronic translation dictionary during the knowledge test is unclear. This unclear policy causes an inconsistency practice among field offices and should be clarified.

Updated Eye Exam Policy Clarifies Testing Procedures

We were asked to examine if the eye exam policy is applied consistently throughout the DLD's field offices due to allegations that false eye exams were being recorded. We visited five different field offices and observed numerous eye exams being performed. Although the examiners appeared to administer correct eye tests, we had a difficult time of knowing whether the exam followed policy.

The difficulty came because the DLD's Visual Acuity policy was vague in that it did not properly explain how to determine if someone passes the eye test. Within a few weeks of our observations, the DLD provided use with a new, clearer policy instructing examiners how to consistently administer the test and what they should observe for a passing score. The policy now states that if the applicant gets two or more letters incorrect on a particular vision test line, it is considered failing.

Despite policy improvements, we are still concerned that the eye exams are susceptible to manipulation. Because the results of the eye

Our observations at five field offices did not show inconsistent eye exams being performed, but a vague eye exam policy made it difficult to be sure.

Utah's eye examination procedures and standards are comparable to other states.

exam are recorded as either pass or fail, in theory, a customer could pass the test yet the examiner could record it as a fail (and vice versa). We asked eight other states how they record the results of eye exams for driver licenses. Three states (Idaho, Oregon, and Colorado) were similar to Utah and only recorded a pass/fail result. Five states (Kansas, New Mexico, Washington, Arizona, and Nebraska) documented the passing acuity score (e.g. 20/40) of the applicant. All states, including Utah, only test applicants to the minimum eye acuity level of 20/40 (which means that with at least one eye, the customer must be able to see at a distance of 20 feet, what others see at a distance of 40 feet). And, all states we contacted manually enter the eye exam score into their databases.

During our audit tests, we did not witness any examiners incorrectly recording the results of the eye exam. And, although the potential for manipulations exists, we find it both unlikely and/or easily remedied. If one examiner incorrectly records the results of an eye test, and a customer questions it, the customer has three options. The customer may: 1) request a different eye test machine be used, 2) request the Snellen eye chart¹ to be used, or 3) have a doctor perform the eye exam and then submit the test results to the DLD.

Therefore, we do not believe Utah's process for testing and recording eye exam results differs from industry practice, and although an examiner could record an incorrect score, we find it unlikely.

Unclear Policy Causes Inconsistent Use of Translation Dictionaries

One DLD practice we were asked to review revealed an inconsistent application of the policy that allows the use of a translation dictionary during the knowledge test. The DLD's knowledge test addresses an applicant's "knowledge of Utah traffic rules, regulations, and driving practices." The knowledge test policy states it is "formatted and given in simple English only," testing an applicant's "ability to read and understand simple English used in highway traffic and directional signs."

The use of a translation dictionary is inconsistent among field offices.

¹ The Snellen eye chart is a wall-mounted chart with block letters used to measure visual acuity, known mostly for use in optometrists' offices.

The procedure explaining how to implement the knowledge test policy states that “the test must be taken... without any external means of aid by person or devices, other than a translation dictionary.” We spoke with six field offices about the use of a translation dictionary. Four offices said the dictionary cannot be electronic. The other two offices said an electronic dictionary was permissible as long as it was not a cell phone or does not allow text messages, to prohibit outside assistance on the exam. The policy does not clarify if the dictionary may be electronic.

Our concern is that when some field offices allow an electronic translation dictionary and other offices do not, there is a dissimilar treatment of DLD customers. The DLD should clarify the policy, clearly stating whether electronic translation dictionaries are allowed, and ensure all field offices are applying it correctly.

Recommendation

1. We recommend the DLD clarify in policy whether or not an electronic translational dictionary may be used during the knowledge test.

Inconsistent application of the policy on the use of translation dictionaries allows for different customer treatment among field offices.

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Chapter IV

Peace Officers' Increased Absenteeism At Administrative DUI Hearings Is Concerning

The Driver License Division (DLD) conducts administrative hearings that are offered to drivers who have been cited for driving under the influence (DUI). In our review of these hearings, one area of concern emerged. We found that peace officer absenteeism at DUI hearings has increased during the past four fiscal years. If the arresting peace officer does not attend the DUI hearing, the DLD may not take action on the driver's license for the DUI (such as suspend or revoke the license). In fiscal year 2009, peace officers failed to show up for 23.2 percent of the DUI hearings. However, in January 2009, 82 percent of all cases where officers attended the DUI hearings resulted in some form of license suspension for the DUI-charged driver. Therefore, the overall effect of officer attendance at DLD hearings was the removal of unsafe drivers on Utah's roads.

We reviewed DUI hearings because there is a risk associated with the discretionary nature of the hearings outcomes. Hearing officers use discretion to evaluate the merits of the case. Initially we conducted a review of 35 DUI hearings to learn about the process. Then we did a more thorough review of 23 hearings where discretion was applied. We did not find any evidence of bias or inconsistency in how DUI case evidence is evaluated for the purpose of determining a hearing's outcome. As stated above, our biggest area of concern was peace officer's decreased attendance at these hearings.

*Utah Code*² directs that when a driver is cited for a DUI (whether under the influence of alcohol or drugs), he or she can request an administrative hearing at the DLD to prevent action being taken on his or her driver license, such as a revocation of the license. If no hearing is requested, the DLD will automatically take action on the license. DUI hearings are conducted by the DLD and are separate from the criminal trial that occurs if a driver is prosecuted.

² See sections 41-6a-521, 53-3-223, 53-3-231 and 53-3-418.

When peace officers attend DLD DUI hearings, action is taken on a driver's license 82 percent of the time, thus removing unsafe drivers from the roads.

In DUI hearings, hearing officers determine if the peace officer had reasonable grounds to issue the DUI citation.

The driver must request the hearing within 10 days, and the hearing must take place within 29 days of the arrest. As outlined in *Utah Code* 53-3-223 (6) and (7), the hearing officer coordinates the meeting and is required to document the following items:

1. Whether the peace officer had reasonable grounds to believe the person was driving a motor vehicle in violation of Section 41-6a-502 (driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration) or Section 41-6a-517 (driving with any measurable controlled substance in the body)
2. Whether the person refused to submit to the DUI tests
3. The DUI test results, if any

If, after a DUI hearing, the DLD determines that a peace officer had reasonable grounds to believe that the person was driving a motor vehicle in violation of *Utah Code* or the driver failed to appear at the hearing as required by the notice, the division can suspend, revoke, or deny the person's license.

No Action Is Taken When Peace Officer Fails to Show for Hearing

Taking no action against a driver's license who has been arrested for a DUI, may result in an unsafe driver on the road.

To ensure that there is proper due process in the hearings, the arresting officer must attend. No administrative action is taken if the officer does not appear at the hearing. The driver's license is not revoked, suspended, denied, or disqualified, and the driver may continue to operate a motor vehicle.

During the administrative hearing, the driver is allowed to have his or her attorney and any witnesses attend. The driver or the attorney is allowed to question the DUI report, field sobriety tests, and other tests, while the hearing officer conducts and maintains control of the hearing. To alleviate their burden of time and travel, peace officers are allowed to participate in the DUI hearings by phone.

The attendance of the driver and peace officer is vital to the outcome of the case. DLD policy states that if no one appears for a

hearing, the division can revoke, suspend, deny, or disqualify a license “based upon the driver’s failure to appear before the division as required in the notice.” Policy continues,

If only the peace officer appears for any administrative alcohol hearing, testimony will not be taken and the division shall suspend, revoke, deny or disqualify based on the driver’s failure to appear before the division as required in the notice.

Finally, policy adds,

If only the driver appears, the hearing officer will recommend “No Action.” Note: It is the responsibility of the peace officer to appear. The hearing officer shall not become involved in “tracking down” officers.

All officers are subpoenaed by the DLD to attend the hearings. The task of showing up to the hearing falls upon the officers. Oversight for hearing attendance should be carried out by the different law agencies and departments.

Peace Officer Absenteeism at DUI Hearings Is Increasing

As stated earlier, the peace officer must attend the hearing for the DLD to take action. After reviewing hearing reports, we observed an increasing absentee rate among peace officers. Figure 4.1 displays the no-show officer rates for the past four fiscal years.

The DLD subpoenas all officers to attend administrative DUI hearings but oversight for hearing attendance should be carried out by the different law agencies.

Figure 4.1 Officer Absenteeism to DUI Administrative Hearings Has Increased 43 Percent in the Past Four Years.

Fiscal Year	Total Hearings*	Officer Failed to Show		Total Failed to Show	% of Total Hearings
		In Person	Via Telephone		
2006	4044	788	49	837	20.7%
2007	4237	857	87	944	22.3%
2008	4703	934	148	1082	23.0%
2009	5159	1030	169	1199	23.2%

**The number of DUI hearings does not reflect the number of DUI arrests. Drivers have to request an administrative hearing. Therefore, there are fewer total hearings than DUI arrests.*

Since 2006, peace officer absenteeism at DLD DUI hearings has increased 43 percent.

Shown in Figure 4.1, absenteeism, whether in person or by phone, is increasing.

In reviewing the hearing statistics, we found that some law enforcement agencies have worse attendance rates than others. We spoke to representatives from four law enforcement agencies with low attendance rates. We also spoke the Commissioner of the Department of Public Safety, and representatives from the Utah Sheriffs' Association, Utah Chiefs of Police Association, and the Utah Highway Patrol DUI Squad. When questioned as to why officers from the departments are not showing up for DUI hearings, we were told that occasionally officers are on vacation or at a medical appointment, or they do not receive notification.

However, the law enforcement representatives also mentioned a few additional reasons why officers purposely do not attend DUI hearings, causing hearing attendance to decrease. The representatives listed the following concerns:

- Some officers dislike these hearings because there is no legal representation supporting the officer's position
- Some officers believe the hearings are not kept under control and undue cross-examination takes place
- Some officers find hearing officers inflexible when scheduling hearings

The DLD records all DUI hearings which peace officers may review if the officers feel they have been treated unfairly.

We conveyed these concerns to the DLD, and they recognize that increasing officer absenteeism is a problem. The DLD commented that if any officer expresses concerns as to how the hearing was

conducted, the hearing's audio recording can be reviewed and determined if any breach of protocol occurred. In addition, the DLD reports that they provide forms and general guidelines to the hearing officers. These forms and guidelines act as templates for DLD hearings. However, since each case differs, the hearing officers cannot be provided with a specific list of allowable questions. Due process requires the driver the opportunity to cross-examine the arresting officer and any witnesses.

Peace Officer Attendance at Hearings Can Have a Big Impact

We reviewed all DLD DUI hearing cases conducted in January 2009. Out of 225 cases, officers attended 186 hearings, and 152 (82 percent) of those hearings resulted in action taken against the driver. Unfortunately, officers failed to call in or show up in person for 39 cases. If the officers would have attended, the hearing officer could have conducted the hearing to determine if action should be taken on the driver's license. Consequently, because there was no hearing, these potentially dangerous drivers continued to drive under a valid license until a court could hear their case (which does not always happen because the driver is not prosecuted). In addition, of those 39 cases, the court took action on 24 of them. We were unable to review the court records for 13 of the 39 cases, which could mean either the driver was never prosecuted or we were unable to locate the court records. In two additional cases, the court dismissed the DUI.

The court action taken on those 24 cases indicates to us that there was merit to the DUI arrest. Presumably, if the hearing would have been able to proceed because the peace officer was present, those 24 unsafe drivers could have been taken off the road sooner than having to wait for a court date. We found the average time it took for one of these cases to be heard in court, from the date of the scheduled hearing, was 123 days.

Below, we describe two examples of the types of cases that we reviewed where a peace officer did not show for a hearing:

1. Driver One was arrested for DUI and requested a hearing, but the peace officer did not show. The driver was then prosecuted and found guilty of DUI nine months later. The judge ruled a

In our sample, the average time between the administrative and criminal case was 123 days.

One DUI-convicted driver never served a license suspension time.

one-year suspension for the driver's commercial driving privilege (CDL license) and a 90-day suspension for the driver's regular driver license. However, the judge ruled the effective date of the suspension to start as of the date of arrest. Therefore, since the criminal hearing did not take place until nine months after the arrest date, the driver's CDL was, in actuality, only suspended (or withdrawn from the driver's use) for three months. The regular license was never suspended because the 90-day suspension period had already passed. If the peace officer would have attended the administrative hearing, most likely, the driver would have served the full suspension terms of the CDL and regular driving privileges.

2. Driver Two was also arrested for a DUI and requested a hearing where the peace officer did not show. We were unable to find any court records indicating the driver was prosecuted for this DUI. Five months after the first DUI arrest, this driver was arrested again for another DUI. The driver again requested a hearing, but the officer showed this time. This led to the driver's license being suspended by the DLD for 90 days, as it was the first offense. Although it was the driver's second DUI arrest, the first arrest did not count to the DLD because the hearing officer was required to take no action on that hearing, and no court action came of it. Had the peace officer shown up for the first hearing and had the DLD taken action on the license at that time, at the second hearing the DLD could have suspended the license for one year, as it would have been a second offense.

Another driver was cited for two DUIs in a five-month period. The license was suspended for only 90 days since no action was taken in the first DLD DUI hearing because the officer failed to show.

Having a peace officer attend a DUI hearing increases the chance of getting an unsafe driver off the road sooner than through a court case.

Our concern with both of these cases, and the other cases we identified, is that if the peace officers would have shown up for the DLD hearings, these unsafe drivers could have been off the road much sooner, instead of posing a risk to the public by continuing to driver under the influence.

Again, we found that when the peace officer shows up for the DLD DUI hearing, action is usually taken (action is only taken when protocol is followed and there is appropriate supporting evidence). In the 186 cases from January 2009 where the peace officer showed up for the hearing, action was taken on the driver's license 82 percent of the time.

The DLD DUI hearings are the quickest way to get unsafe drivers who have been arrested for a DUI off the road. According to *Utah Code* 41-6a-502 and 517, a person may not operate or be in control of a vehicle if there is sufficient alcohol or any controlled substance in that person's body that renders that person incapable to safely operate a vehicle. The intent behind the DLD's DUI hearings and *Utah Code* 41-6a-521, which requires that a DUI hearing be held within 29 days of arrest, is to promptly get unsafe drivers off the road. For this to occur, a peace officer's attendance at these hearings is vital.

In speaking with the law enforcement organizations and Department of Public Safety, all parties seem to agree that the reduced attendance of peace officers at DUI hearings is a problem. We recommend these organizations work through all relevant issues acting as obstacles to peace officer attendance at DUI hearings, including additional training, hearing procedures and scheduling concerns, and any other related concerns.

Recommendation

1. We recommend the Driver License Division work with relevant law enforcement organizations to work through all issues acting as obstacles to peace officer attendance at DUI hearings.

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Chapter V

DLD Adjusting to Legislation Affecting Identity and Lawful Presence Verification

While we were conducting this audit, the Driver License Division (DLD) was required to adjust some work processes relating to the verification of a person's identity and lawful presence in the United States and Utah. These changes were necessary because of new requirements set forth in several pieces of legislation, namely, the federal REAL ID Act, 2008's First Substitute Senate Bill 81 (S.B. 81) and 2009's Senate Bill 40 (S.B. 40), respectively, from the Utah General Legislative Sessions. These changes brought about media attention because of the increased wait and service times for customers at DLD field offices. A preliminary review of the effect the changes have on customer wait and service times shows that as time progresses, wait times at DLD field offices decrease. Also, one benefit of taking the measures necessary to implement these changes is that the DLD now has an audit trail of accepted documents that it has never had before.

The federal REAL ID Act of 2005, under Title 6, part 37, of the *U.S. Code*, imposes certain security, authentication, and issuance standards for states' driver licenses and ID cards to be considered official documents accepted by the federal government. As mandated by the Department of Homeland Security, these documents are necessary in order to board federally regulated aircraft or enter nuclear power plants and federal buildings. S.B. 81 made changes to Utah law, requiring the DLD to verify an individual's identity and lawful presence in the United States when that individual desires a driver license or identification card. S.B. 40 grants the DLD the authority to carry out S.B. 81's mandate.

For the next five years starting January 4, 2010, each person wanting a Utah license (or renewal) will have to go into the field offices, get his or her picture taken even if no card is issued, and supply documents (which will be scanned) proving his or her identity and lawful presence in the United States and Utah. Capturing the image before a service is provided helps to ensure the service received is indeed provided to the person who sought it. It prohibits someone from taking a test for another person because the person's image

The DLD is now required to scan and store a driver's proof of lawful presence. This procedure helps ensure the correct person is receiving the service.

Utah's adherence to REAL ID Act principles, through Senate Bills 81 and 40, will allow a Utah driver license to be used as an official federal document.

shows up on the examiner's computer at the time of the service. Utah is required to keep this information in an electronic format for 10 years.

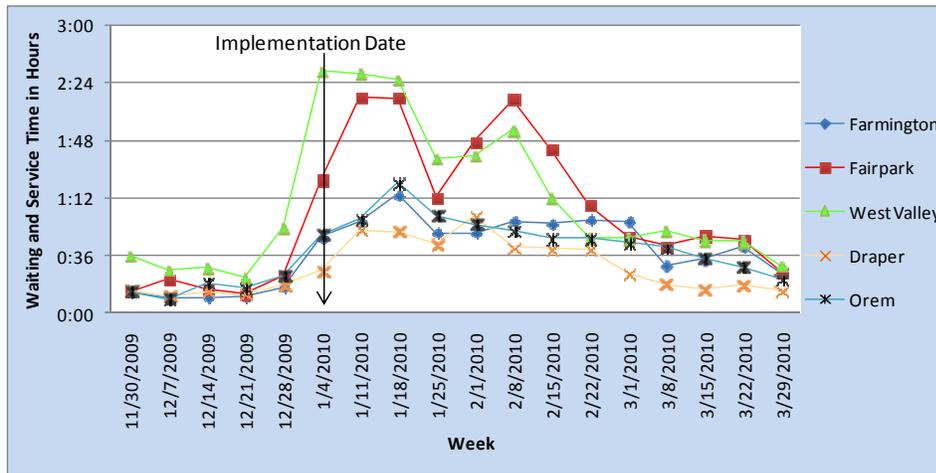
REAL ID is an optional program for the states but if they choose to opt out their citizens' driver licenses will not be accepted for official purposes (such as used to board a federally regulated aircraft). In the 2010 Utah Legislative General Session, First Substitute House Bill 234 (H.B. 234) was passed. H.B. 234, Opting Out of the REAL ID Act, prohibits Utah from participating in and implementing provisions of the REAL ID Act. However, although Utah has opted out of the REAL ID Act, S.B. 81 and S.B. 40 put into place all the federally-necessary provisions allowing Utah's driver licenses to be accepted as official documents. H.B. 234 allows the DLD to comply with provisions of the REAL ID Act already authorized. However, according to the DLD, if the REAL ID Act should change in the future, in order for a Utah license to remain an official document in the eyes of DHS, state law may have to be amended.

Wait Times Are Improving

The effective date of the changes in the laws discussed in this chapter was January 4, 2010. At that time, the division came under public and media scrutiny because the wait time in the field offices spiked. However, as examiners and offices have adjusted to the new system and workload, average wait times at the DLD field offices have been decreasing.

Through a queuing program, the DLD tracks the wait times at five field offices. As time extends beyond the implementation date, wait times have decreased. Figure 5.1 shows these field offices' wait times before, at the time of, and after implementation (through the week of March 29, 2010) of S.B. 40. Figure 5.1 averages the wait times for original/new licenses, renewals, and duplicates as these are the most common services.

Figure 5.1 Wait Times Are Decreasing. Wait times measured over 18 weeks reflect a surge in DLD field office waiting after legislation was implemented in January 2010.



After an initial spike in wait times at the beginning of the year, the wait times in five field offices are decreasing.

Figure 5.1 shows the steep surge in average wait times at the time of implementation (the week of January 4, 2010). However, as of March 29, 2010, wait times were decreasing. At its peak, average wait times in these five offices ranged from about 40 minutes to almost three hours. By March 29, 2010, the average wait times had decreased to about 15 to 30 minutes.

Despite decreased waits, DLD data does not capture full wait time (as noted on the DLD’s website). For example, it does not include any time the customer must wait to get his or her picture taken. At one field office, we observed as little as no wait time to as much as a 24-minute wait time before the customer’s picture was taken. When a customer walks into a field office, he or she may need to wait before getting to the first counter, where the pictures are taken. Once the picture is taken, the customer receives a number and waits to receive the other services. The wait times reflected on Figure 5.1 (and the DLD’s queuing program) start from the moment the customer gets his or her picture taken.

Wait times collected by the DLD do not reflect time spent in line before the DLD takes the customer’s picture.

DLD is Responding to Wait Times

To alleviate customer wait time, the DLD has hired additional employees. Three of the five offices (Farmington, Orem, and Draper) shown in Figures 5.1 and 5.2, gained a combined total of nine full-time equivalent examiners since January 1, 2010. And all five offices

To improve customer service, the DLD hired new employees and added a new on-line scheduling feature.

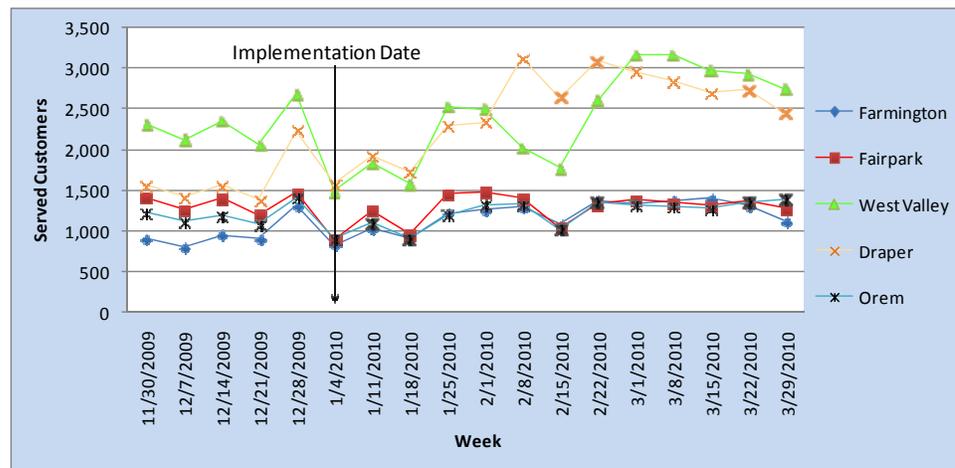
listed in Figures 5.1 and 5.2 have yet to fill about 8 currently open examiner positions. Some of the open examiner positions are temporary during the five-year implementation time.

In addition to increasing the number of examiners, the DLD recently implemented a new on-line scheduling feature on their website. Utah drivers can now schedule an appointment with an examiner (the customer will receive an express number when he or she arrives at the DLD field office) to speed up their waiting times. This process reduces the fluctuation of customer demand within field offices and ultimately decreases the wait times for all customers.

We also examined the number of customers served. The number of customers served, as shown in Figure 5.2, appears to have increased slightly, aside from the Draper and West Valley field offices, where the number of customers has increased substantially.

Figure 5.2 Average Number of Customers Served Has Slightly Increased the Legislation Was Implemented. We believe the number of customers served has slightly increased because during the five-year time period for implementation, renewal by mail is no longer allowed. Therefore, customers must come into the field offices to renew their licenses.

The number of customers served in the field offices has slightly increased.



We believe the reason why the Draper office's number of customers served has increased is because, effective February 12 (which is reflected in the week of February 8), the Draper office extended its workweek to include Fridays. On March 5, the West Valley office also extended its work week to include Fridays (reflected in the March 1 numbers).

Scanning Proof of Residency Documents Could Be Beneficial

During the audit, we had some concerns about which documents are being accepted at various field offices to show proof of Utah residence. We believe that scanning the driver's documents to prove Social Security number and legal residence, will be beneficial to the DLD. It provides an audit trail the DLD never had before, allowing them to conduct future audits of what is being accepted at field offices as proof of residence.

In our examination of application forms, many times we found DLD examiners would simply mark "yes" that residency was proven, but they would not document what form justified legal residence. We believe the DLD should conduct audits of field offices, examining what is being accepted to prove residency. The DLD allows field offices to exercise discretion in determining what is acceptable as proof of residence. As an example of that discretion, we observed customers being allowed to bring in a self-addressed stamped envelope, mailed to themselves, as proof of residence. We question if a self-addressed stamped envelope should be allowed to prove residency, since anyone can mail a letter to him- or herself at any address. We believe the DLD should review some of the documents being accepted to determine what should be allowed.

This preliminary review of the effects of the changes in the law because of the influence of the REAL ID Act, S.B. 81, and S.B. 40 appears to show that wait times will continue to decrease, potentially to their previous levels. Also, the act does provide an audit tool for the DLD to ensure appropriate documents are being accepted by their field offices. Since Utah has opted out of the REAL ID Act, in the future, our laws will not reflect any changes in the act unless they are amended.

Recommendation

1. We recommend the DLD establish an auditing process to review the appropriateness of documents being accepted in the field offices as proof of lawful presence.

Since documents are now scanned and stored, the DLD should audit the documents to ensure that only proper documentation is being accepted.

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Agency Response

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State of Utah

GARY R. HERBERT
Governor

GREG BELL
Lieutenant Governor

Department of Public Safety

D. LANCE DAVENPORT
Commissioner

Driver License Division

NANNETTE ROLFE
Director

May 11, 2010

Darin Underwood
Office of the Legislative Auditor General
W-316 Utah State Capitol Complex
P.O. Box 145315
Salt Lake City, UT 84114-5315

Dear Mr. Underwood;

I would like to take this opportunity to thank Deanna Herring and Dave Apple for their thorough and comprehensive audit of the Utah Driver License Division's policies and practices as they relate to the findings of the 2009 - 2010 "Performance Audit of the Driver License Division". Below you will find the auditors' recommendations and the Division's responses.

Chapter II – Oversight of Third-Party Testers Needs to Improve

1. We recommend the DLD conduct more covert observations of third-party tester examinations.

As stated in the audit, Driver License currently conducts covert observations on the third-party testers and/ or examiners as part of an investigation due to complaints, fraudulent activity or other concerns. However, to ensure the CDL program is functioning at the highest level of credibility, the Driver License CDL Program Coordinators will conduct covert observations on 100% of the third-party testers (170) over the next 2 year period. Along with the scheduled observations, the Division will continue to investigate complaints, fraudulent activity and other concerns. To facilitate this change, Driver License is currently working to modify Administrative Rule 708-21.

2. We recommend the DLD systematically compare the CDL calendar to scanned test forms to ensure proper paperwork is being submitted.

As stated in the audit, the Driver License Division has an annual reconciliation process in which the submitted paperwork is reviewed. However, we do agree with the audit finding that the CDL calendar system needs to be modified to allow the Division more flexibility to systematically select tests. With the recent grant funds we have received, we will continue to work closely with our IT programmers to modify the existing system and make the necessary enhancements.

3. We recommend the DLD establish third-party tester oversight policies pertaining to the following activities:

- Reviewing testing paperwork and the CDL calendar for irregularities
- Keeping more comprehensive records documenting observations of third-party testers
- Promptly providing feedback to third-party testers after they have been observed conducting CDL examinations.
- Consistently retesting drivers who have been licensed under a third-party tester found to have conducted an improper examination.
- Setting forth disciplinary and removal actions, ranking them in order of severity, with a consistent application of the sanctions.

- Currently the CDL Program Coordinators review each testing score sheet that has been submitted to the Division for accuracy and completeness. If there are concerns or questions, the individual tester is contacted by the CDL Program Coordinator to address and resolve the issue. The Program Coordinator(s) will also reconcile all testing score sheets during the annual audit. As noted in recommendation #4, the grant funding will be used to enhance and modify the current computer system which will provide the capability to randomly select additional score sheets to compare and track them to the CDL scheduling calendar.

- Following the annual audit, the third-party testers and the individual third-party tester will be given a letter which provides the following year certification, documents the audit findings, and outlines the recommendations and requirements if any.

- When the CDL Program Coordinator has completed their observation of a CDL examination, the Coordinator will make a determination if necessary of any violations or training issues. Based on their findings, the Coordinator will provide written feedback to the third-party tester. If it appears that the violation could result in criminal activity, the Coordinator will notify Division administration and a determination will be made on whether or not to refer the case to the State Bureau of Investigation. When reviewing the audit, it was noted that the Division did not respond to audit findings in a timely manner. When discussing this issue with the CDL manager and staff, they were under the impression that nothing could be acted upon until the audit had been completed. Since receiving clarification, the CDL staff have provided feedback to the third-party

testers and documented the finding and recommendations to be in compliance. This also included any additional follow-up by the CDL Program Coordinators.

- When a finding has been made that improper testing has occurred, the Division will notify the CDL holder they must return to the Driver License Division and demonstrate their ability to safely operate a commercial motor vehicle by meeting the minimum standards of a CDL skills test.

- Through Policy and Procedure, the Division will set forth disciplinary action and cancellation requirements of third-party testers and individual third-party testers. The policy will outline the action to be taken based on the severity of the violation.

4. We recommend the DLD update and improve the CDL calendar to track failed tests, minimize ambiguity of CDL times and improve the statistical oversight tools of the website.

The Driver License Division has recognized the need to modify the existing system. To obtain the necessary funding to upgrade the system, the Division applied for the FY2010 Commercial Driver's License Program Improvement grant in October 2009. As outlined in the grant, the funding will be used to "make improvements to the existing CDL Skills Test Monitoring System for better reporting to the Driver License CDL Program Coordinators. These reports will assist the DL CDL Program Coordinators to alleviate fraud as well as helping to ensure that the skills tests being given are meeting the federal standards for completeness and accuracy". The Division was recently informed that the grant had been awarded on April 1, 2010 which will allow the update and enhancement of the current CDL calendaring system.

5. We recommend the DLD control the number of third-party testers in Utah by requiring a minimum number of tests to be conducted annually.

Over the past few years, the division has continually received numerous requests to increase the number of certified individual third-party testers which has contributed to this issue. With the limited number of CDL Program Coordinators (2), the Division has been concerned with the increasing number of third-party testers and individual third-party testers and our ability to properly audit and regulate them. With the audit findings, the Division now has the added support to amend Administrative Rule, R708-21, which will require all third-party testers to conduct a minimum of 10 tests annually to retain their certification. By making this amendment, the CDL Program Coordinators will have better oversight of the third-party testing program by de-certifying the testers who do not meet the minimum testing requirements.

6. We recommend the DLD require third-party testers to pay an annual fee and post a surety bond to cover the cost of regulating the CDL program and deter improper testing.

The Division agrees that by charging the third-party testers an annual fee would help off-set the cost of hiring an additional CDL Program Coordinator. We also agree that requiring the third-party tester to post a surety bond would protect the Division and testing applicants from accruing additional cost if re-testing is needed. The Division will work with Administration to determine the feasibility of this recommendation. If approved, legislative changes will be required.

Chapter III– Some DLD Policies Need Improvement

1. We recommend the DLD clarify in policy whether or not an electronic translational dictionary may be used during the knowledge test.

On March 29, 2010, the Driver Services Bureau Chief sent an email to all Division employees clarifying information concerning whether or not an electronic translation dictionary was allowed during knowledge testing. The Division has also updated Policy and Procedure section II-A1 to clarify this information.

Chapter IV– Peace Officers’ Increased Absenteeism at Administrative DUI Hearing is Concerning

1. We recommend the Driver License Division work with relevant law enforcement organizations to work through all issues acting as obstacles to peace officer attendance at DUI hearings.

The Driver License Division currently works with law enforcement organizations and will continue to do so. We will also encourage the law enforcement officer to utilize the telephonic hearing option more frequently.

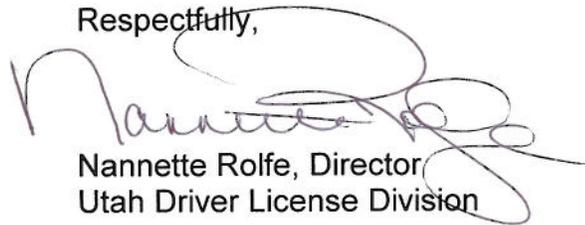
Chapter V– DLD Adjusting to Legislation Affecting Identity and Lawful Presence Verification

1. We recommend the DLD establish an auditing process to review the appropriateness of documents being accepted in the field offices as proof of lawful presence.

The Driver License Division has recently requested re-allocation of the 2008 REAL ID grant in which we intend to hire a program coordinator to oversee the requirements of SB81/Real ID, which will include an auditing process to ensure proper documents are being accepted in the field offices during the time of licensing.

We appreciate the opportunity to respond to the audit and will continue to modify the items which have been identified.

Respectfully,



Nannette Rolfe, Director
Utah Driver License Division

Cc: Commissioner Lance Davenport
Colonel Keith Squires
Deanna Herring
Dave Apple