

**PART 138**

**COMMISSIONER'S REGULATIONS**

**MOTOR VEHICLE**

**ACCIDENT PREVENTION COURSE**

**(Repealed & New 5/31/00)**

**PART 138**

**REGULATIONS OF THE COMMISSIONER OF MOTOR VEHICLES**

**Motor Vehicle Accident Prevention Course**

**[Repealed & New 5/31/00]**

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### **Section 138.1 Introduction.**

Section 2336 of the Insurance Law provides that the Department of Motor Vehicles will approve and monitor motor vehicle accident prevention courses for liability and collision insurance premium reduction. A course which has been approved by the Department for liability and collision insurance premium reduction shall also be eligible to provide point reduction pursuant to the provisions of this Part and Part 131 of this Title. Article 12-B of the Vehicle and Traffic Law sets out certain standards for preserving the quality and efficacy of the accident prevention course program.

### **138.2 Definitions.**

For the purpose of this Part, the following terms shall have the following meanings:

- (a) Sponsoring agency shall mean an organization which owns an approved motor vehicle accident prevention course approved by the Commissioner pursuant to this Part. A sponsoring agency shall be responsible for the delivery and administration and compliance with all applicable laws, rules, and regulations relative to the motor vehicle accident prevention course.
- (b) Delivery agency shall mean an organization which conducts a sponsoring agency's approved motor vehicle accident prevention course.
- (c) Department shall mean the New York State Department of Motor Vehicles.
- (d) Instructor shall mean an individual employed by a sponsoring agency or delivery agency to teach an approved motor vehicle accident prevention course who meets the qualifications set out in Section 138.7 of this Part.
- (e) Accident prevention course or course shall mean the motor vehicle accident prevention course or specialized course curriculum which has been approved by the Department in accordance with standards set out in this Part.
- (f) Specialized course shall mean a course aimed primarily at enhancing safety within a specific occupation or for a specific category of vehicles within that occupation.
- (g) Completion certificate shall mean a document which cannot be altered and which is provided to the student who successfully completes the motor vehicle accident prevention course.

### **138.3 Point reduction benefits.**

Section 131.5 of this Title permits drivers to be eligible for point reduction on their driving record if they have completed an approved course. Upon receipt of electronic student completion data and two dollars (\$2) from the sponsoring agency to cover the Department's administrative costs, notice of program completion will be entered on a motorist's driving record. The Department will enter a maximum reduction of four points on the driving record, if appropriate, for each motorist certified as having attended and completed a motor vehicle accident prevention course. All required documentation must be transmitted by the sponsoring agency to the Department in a manner prescribed by the Department.

**138.4 Course approval.**

- (a) An organization seeking approval as a motor vehicle accident prevention course sponsoring agency shall apply to the Commissioner for approval in writing on forms prescribed by the Department. No one may conduct a course unless the course has been approved by the Department of Motor Vehicles in accordance with the standards set out in this Part.
- (b) An organization which proposes to offer a motor vehicle accident prevention course for point and insurance reduction benefits must submit a completed application to the Department for approval in accordance with standards set out in this Section and Section 138.5 of this Part.
- (c) An application shall not be considered to be complete until all information and materials required by this Part and Article 12-B of the Vehicle and Traffic Law have been submitted. The Department shall either approve or deny an application for course approval no later than 90 days following submission of a completed application. In the event the Department takes no action on an application after 90 days following submission of a completed application, the application shall be deemed denied.
- (d) To be approved by the Department, a course must meet all of the following criteria:
  - (1) The course must have been given for at least two (2) years by the applicant agency or organization prior to the submission of an application to the Department.
  - (2) The applicant organization must provide, at its own expense, verifiable research documentation showing evidence of the course's effectiveness in terms of reduced convictions or accidents or both, based on the criteria set forth in this section for initial course approval.
  - (3) The course must provide a minimum of 320 minutes of instruction with a certified instructor present. The instruction must include active learning techniques (i.e., student participation). If the course is conducted in one day, a minimum 30-minute break must be allowed in addition to the instruction time. Such instruction must address the following subject areas:
    - (i) the concept of collision prevention, including a discussion of the factors involved in traffic situations;
    - (ii) alcohol and drug use as a contributing factor in motor vehicle collisions;
    - (iii) accident prevention techniques;
    - (iv) the use of occupant restraints;
    - (v) the risk factors involved in driver attitude and behavior such as speeding, reckless and aggressive driving, and improper lane use, etc.;
    - (vi) traffic laws in New York State;

- (vii) physical and mental condition of drivers (i.e., age, vision, hearing, mobility, illness, fatigue, etc.);
  - (viii) conditions and strategies of driving; and
  - (x) city versus suburban driving and rural versus expressway driving.
- (4) The course must use up-to-date audio/visual aids such as films, slides, and videotapes which should not use more than 25% of the presentation time. The balance of the presentation time shall be led by a qualified instructor in an approved classroom based on standards set out in Section 138.8 of this Part.
- (5) No course may be offered in New York State by more than one sponsoring agency.
- (e) Evaluation of motor vehicle accident prevention course. This subdivision shall apply to all sponsoring agencies applying for initial course approval.
- (1) All sponsoring agency applicants shall supply the Department with proof of effectiveness consisting of verifiable research documentation employing accepted research principles in order to evaluate the impact of the New York State Point and Insurance Reduction Program. The evidence shall be specific to the course submitted, and shall not be more than five (5) years old.
  - (2) An independent audit of course evaluations may be requested by the Department to be performed at the expense of the sponsoring agency.
  - (3) The Department may conduct its own evaluation of any approved course offered for point and insurance reduction benefits.
  - (4) Submission of any fraudulent or intentionally misleading data will disqualify that organization and all owners and principals from participating or approval in the accident prevention course for a period of ten (10) years from the submission date.
  - (5) The effectiveness of the course will be measured in terms of reduced convictions or accidents or both, based on the course attendees (the treatment group) as compared to a matched group of motorists who did not attend an accident prevention course (the control group) during the same time frame. This documentation shall be based on motorist records from the jurisdiction in which the course was given. The following criteria shall be used for the purpose of this evaluation and all renewal evaluations required under Section 138.5(f) of this Part:
    - (i) Treatment group
      - (a) Each treatment group shall be comprised of a minimum of 3,000 randomly selected motorists from course attendees. For specialized courses, the sample treatment group shall be comprised of a minimum number of 1,000 randomly selected drivers.

- (b) The documentation shall include conviction or accident data for each motorist for a minimum of eighteen (18) months prior to the course completion date.
  - (c) The documentation shall include conviction or accident data for each motorist for a minimum of eighteen (18) months subsequent to the course completion date.
- (ii) Control group
  - (a) Each control group shall be comprised of a number of motorists equal to that of the treatment group, but with no previous course attendance, similar to the treatment group by sex, age, geographic region, and, if possible, number of convictions or accidents during the time frame equal to the treatment group.
  - (b) The documentation shall include conviction or accident data for each motorist for a time frame prior to the dummy attendance date equal to that of the treatment group.
  - (c) The documentation shall include conviction or accident data for each motorist for a time frame subsequent to the dummy attendance date equal to that of the treatment group.
- (iii) Statistical procedures
  - (a) A normally accepted statistical procedure, applicable to the type of data and evaluative design used, which compares quantifiable measures of performance before and after intervention, for a treatment and control group may be used.
  - (b) The level of significance shall be at .10 or stronger.
- (iii) Miscellaneous
  - (a) The documentation shall contain a description of the sampling and analytic procedures used.
  - (b) The documentation shall include the motorist identification number and the course completion date for all course attendees should the Department of Motor Vehicles need to verify course effectiveness using different motorists and statistical procedures.
  - (c) Applicants must supply, upon request, any background documentation that serves as the basis for evaluation of the course, such as drivers' abstracts, reports or other materials.

**138.5 Sponsoring agency approval.**

- (a) An organization that owns a course must obtain approval from the Department before the course can qualify for point and insurance reduction benefits.
- (b) An application for approval of a sponsoring agency shall be made in writing to the Department and must include:
  - the title or name of the course,
  - the name of the organization submitting the application,
  - proof of course ownership; and
  - the names and addresses of all owners, operators, managers, partners, officers and directors of the agency or organization and, if such persons have ever used or have ever been known by another name, such name or names must also be submitted.
- (c) An application shall not be considered to be complete until all information and materials required by this Part and Article 12-B of the Vehicle and Traffic Law have been submitted.
- (d) The Department will not approve a sponsoring agency with a course name that is the same as the name of any other approved course or is so similar to the name of any other approved course that confusion or deception would result.
- (e) Upon approval, a sponsoring agency will be subject to a two-year probationary period, during which compliance with this Part will be assessed. Final approval will be based upon successful completion of the probationary period.
- (f) Sponsoring agency approval must be renewed every five (5) years in accordance with the standards set forth in section 138.4(e) of this Part. An approved specialized course is exempt from this provision and need not be renewed every 5 years. However, if the Department determines that an approved specialized course does not adequately address the standards as set forth in this Part, the specialized course may be required to submit a course effectiveness study as defined in section 138.4 of this Part.
- (g) To obtain approval as a sponsoring agency, an applicant must:
  - (1) provide the Department with a description of the minimum qualifications of all managers and instructors who will be hired or approved by the applicant;
  - (2) provide and require a minimum of six hours of instructor training programs, including in-service refresher workshops at least every two (2) years, to ensure competency in delivering the course in the areas set out in Section 138.4(c)(3) of this Part. These programs must also address teaching methodologies and psychology of learning, as well as a discussion of all applicable laws, regulations, and policies; the instructor training programs must also include a demonstration of the teaching abilities of each instructor; applicants must submit a full description of the instructor training course, including the number of hours and a copy of the curriculum;

- (3) provide each instructor with an instructor's manual and provide student workbooks and/or manuals for each course participant as necessary to follow and participate in the course; each workbook shall have prominently displayed the sponsoring agency's name and telephone number;
- (4) provide, for the Department's approval, a sample course completion certificate which is designed to and capable of preventing fraud and forgery, for the purpose of verifying course completion for submission to insurance companies;
- (5) establish and maintain a record keeping system compatible with the Department's requirements for data entry of course completion information.
- (6) establish appropriate lines of communication with the Department in order to provide efficient and effective administration of the course;
- (7) provide and maintain an office in New York State for the operation and supervision of such course, to provide customer assistance and to keep program records open to the inspection of the Department during the sponsoring agency's normal business hours, or by appointment at a time and place acceptable to the Department;
- (8) submit copies to the Department of any and all written policies and procedures related to the administration of the program.
- (9) comply with Section 1304 of the Not-for-Profit Corporation Law if the applicant organization is a foreign not-for-profit corporation or Section 1304 of the Business Corporation Law if it is a foreign profit making corporation;
- (10) submit to the Department copies of the forms filed with the appropriate county clerk if the sponsoring agency is an individual, partnership and/or D/B/A;
- (11) supply the Department with a copy of the certificate of incorporation filed with the Secretary of State if the sponsoring agency is a corporation, or a charter issued by the New York State Board of Regents, if applicable; and
- (12) ensure that all instructors are qualified at all times to teach the accident prevention course by establishing and maintaining an account with the Department's License Event Notification Service (LENS), which monitors the driving records of selected motorists. In any case where the instructor's driving privileges are suspended, revoked, or expired, the Department will notify the sponsor.

#### **138.6 Delivery agency approval.**

- (a) All delivery agency applications must be reviewed and approved by an approved sponsoring agency before the delivery agency may conduct a course which qualifies for point and insurance reduction benefits.
- (b) In order to be approved by a sponsoring agency, a delivery agency must:

- (1) have at least one qualified instructor on staff pursuant to Section 138.7 of this Part;
  - (2) have one or more classrooms which meet standards set out in Section 138.8 of this Part;
  - (3) offer a course approved pursuant to Section 138.4 of this Part;
  - (4) comply with Section 1304 of the Not-for-Profit Corporation Law if the delivery agency is a foreign not-for-profit corporation or Section 1304 of the Business Corporation Law if the delivery agency is a foreign profit making corporation;
  - (5) submit to the sponsoring agency copies of the forms filed with the appropriate county clerk if the delivery agency is an individual, partnership and/or D/B/A;
  - (6) submit to the sponsoring agency a copy of the certificate of incorporation filed with the Secretary of State if the delivery agency is a corporation or, if applicable, a copy of the charter issued by the New York State Board of Regents; and
  - (7) submit to the sponsoring agency the federal employer tax identification numbers and/or federal social security account numbers of the owners, operators, managers and instructors and any other paid employee who is involved in the administration or delivery of any approved motor vehicle accident prevention course.
- (c) No delivery agency shall represent itself as a driving school unless it has a valid driving school license issued by the Department pursuant to Part 76 of the Commissioner's Regulations. A copy of the current driving school license shall be submitted to the sponsoring agency and kept on file.
- (d) As a condition of approval, all delivery agency managers, owners, operators, officers, partners and employees must sign a prepared statement, provided by the sponsoring agency, acknowledging the fact that they have read and agree to comply with this Part and all other applicable laws, regulations, policies and procedures.

### **138.7 Qualifications for instructors.**

- (a) All instructor applications must be reviewed and approved by the sponsoring agency before the instructor may conduct a course which qualifies for point and insurance reduction benefits. The instructor must provide the federal social security number to the sponsoring agency.
- (b) An instructor of a motor vehicle accident prevention course must:
  - (1) have a driver's license valid for operation in New York State;
  - (2) have at least three years of licensed driving experience;
  - (3) have no driver's license suspension or revocation within the five (5) years prior to becoming an instructor (with the exception of an indefinite suspension which can be terminated by the performance of an act by the licensee) and no alcohol related driving conviction within the seven (7) years prior to becoming an instructor;

- (4) have a high school or equivalency diploma;
- (5) be at least nineteen (19) years of age;
- (6) complete a sponsoring agency's instructor preparation course (as required by Section 138.5(g)(2) of this Part) before conducting the course and participate in refresher workshops at least once every two (2) years in order to insure an understanding of appropriate learning concepts and the utilization of these concepts; and
- (7) have not been convicted within ten (10) years prior to becoming an instructor of a felony or crime involving violence, dishonesty, degeneracy, moral turpitude, deceit, or fraud, including but not limited to theft, forgery, making false written statements, rape, perjury, fraud or bribery. Sponsors shall solicit and collect this information on instructor application forms. No instructor application shall be deemed complete until the applicant has disclosed this information and signed the dated application.

### **138.8 Classroom facilities.**

- (a) A delivery agency approved by a sponsoring agency must provide a classroom which is clean, adequately lighted, heated, ventilated and free from visible and/or audible distractions. Adequate rest room facilities must be available to all students. Classrooms must have adequate seating facilities for the maximum number of students enrolled in any such course with no classroom having a seating capacity for fewer than ten (10) students. The classroom must be equipped with fully functional audio/visual equipment which is clearly visible from all seating areas.
- (b) In no case shall any class have more than forty (40) enrolled students.
- (c) Each classroom must have at least fifteen (15) square feet of open floor space available per enrolled student.
- (d) A delivery agency must have the address of each classroom on file with its sponsoring agency who will make this information available to the Department upon request. No delivery agency may change class locations or hold any class without prior approval of the sponsor, in accordance with this section.
- (e) Classroom facilities must be free from interference or distractions to instruction and closed to the general public.
- (f) Classrooms must comply with all applicable local fire, sanitation and building requirements.
- (g) To the extent required by the Americans with Disabilities Act ("ADA"), the course must be available to any qualified handicapped individual, as defined by the ADA, seeking access to the program.

- (h) No classroom shall be approved by a sponsoring agency where the place of business is conducted in any non-traditional classroom location (such as a house, trailer, bar or grill, personal residence, residence room in a hotel, restaurant, diner, billiard hall, bowling alley, gasoline station, garage, tour bus, comedy club, or strip club,). A sponsoring agency may consult with the Department before approving a classroom location, when a question arises as to what is a suitable facility for conducting an accident prevention course.
- (i) The instructor's full name, delivery agency name, telephone and code number, sponsoring agency name and telephone number shall be prominently displayed in the classroom during class time.
- (j) No delivery agency classroom shall be approved by a sponsoring agency if it is within a building owned or leased by the State or county in which motor vehicle registrations or licenses to drive motor vehicles are issued to the public.

**138.9 Suspension or revocation of approval; hearings.**

- (a) The Department may suspend or revoke approval of a sponsoring agency or delivery agency for any of the following causes:
  - (1) the Department determines that the sponsoring agency, its delivery agencies or instructors have failed to comply with any of the provisions of this Part or any applicable law or a sponsoring agency has failed to provide oversight of its delivery agencies in accordance with this Part;
  - (2) a course which, after evaluation, proves ineffective or which contains any changes which have not been approved;
  - (3) a sponsoring agency or delivery agency has made a material false statement or concealed a material fact in connection with an application or has knowingly presented false or misleading information to the Department, or to the general public;
  - (4) failure or refusal of a manager, owner, operator, officer, partner, or employee of the sponsoring agency or delivery agency to permit the Department or its representatives to inspect any of the offices, records, classrooms or courses;
  - (5) failure or refusal of a manager, owner, operator, officer, partner, or employee of the sponsoring agency to report every motorist's completion of an accident prevention course to the Department or, in the case of a delivery agency or instructor, to the sponsoring agency;
  - (6) failure or refusal of the managers, owners, operators, officers, partners, or employees of the sponsoring agency to produce approval and/or termination records for delivery agencies and instructors when requested to do so by the Department;

- (7) failure or refusal to maintain standards in accordance with this Part for instructors or to secure the services of qualified instructors or to secure the use of equipment sufficient to maintain the delivery agency or classes;
  - (8) failure to advise the Department within thirty (30) days of a change in the sponsoring agency's ownership, name or address;
  - (9) failure of the managers, owners, operators, officers, partners, or employees of the sponsoring agency to submit to the Department upon request on or before an established deadline any forms, reports, or approvals to conduct the course;
  - (10) provision of a course completion notification to the Department, or, in the case of a delivery agency or instructor, to a sponsoring agency, for a person who has not completed the course;
  - (11) provision of a course completion certificate to a person who has not completed the course;
  - (12) failure to terminate an instructor when the sponsoring agency becomes aware of the fact that such instructor's driving privileges have been suspended, revoked or restricted or that such instructor does not meet the standards set out in this Part;
  - (13) conviction for any felony or crime involving fraudulent activity by any manager, owner, operator, officer, partner, employee or instructor of the sponsoring agency or delivery agency;
  - (14) teaching the course in locations that have not been approved in accordance with section 138.8 of this part;
  - (15) failure to display an instructor's full name, delivery agency name, telephone, and code number, sponsor's name and telephone number in the classroom during class time; or
  - (16) failure of the sponsoring agency to monitor its delivery agencies and instructors as required by section 138.10 of this Part and, in cases where evidence of impropriety is discovered, failure to take appropriate steps to correct the impropriety or terminate the delivery agency or instructor if necessary. In cases where allegations of fraudulent or criminal activity are presented, (including but not limited to, false advertising, short classes, fraudulent sale or issuance of completion credit or certificates to those who are not legally entitled to receive them) failure to provide timely notification to the Department and, upon request, investigate the matter.
- (b) An instructor shall have his or her status suspended or revoked by the sponsoring agency, the delivery agency or the Department for any of the following causes:
- (1) the instructor's presentation does not adequately address subject areas set out in Section 138.4(d)(3) of this Part;
  - (2) a false statement is provided on the instructor's application or any other materials submitted to the sponsoring agency, delivery agency or the Department;

- (3) the instructor's driving record is inconsistent with the qualifications for an instructor as set out in Section 138.7 of this Part;
  - (4) the instructor's classroom practices are found to be in violation of any of the provisions of this Part;
  - (5) the instructor conducts the class while under the influence of alcohol or illegal drugs;
  - (6) after evaluation, the instructor's classroom performance is ineffective; or
  - (7) the instructor has been convicted of any fraudulent activity related to the program, or is convicted of any crime involving violence, rape, dishonesty, deceit, indecency, degeneracy, moral turpitude or fraud, including but not limited to theft, forgery, making false statements, perjury or bribery.
- (c) If the approval of a sponsoring agency is suspended or revoked by the Department, all delivery agencies and classroom operations of the sponsoring agency will also be suspended or revoked. If the approval of a delivery agency is suspended or revoked by the sponsor or the Department, all instructors and classroom operations of the delivery agency will also be suspended or revoked.
- (d) No approval of a sponsoring agency, delivery agency or instructor shall be denied, revoked or suspended by the Department without an opportunity to be heard, such hearing to be held pursuant to Part 127 of the Commissioner's Regulations and at such time and place as the Commissioner shall prescribe. A hearing must be requested in writing within thirty (30) business days of receipt of notification of suspension or revocation from the Department. Any request filed after the 30 day deadline shall not be considered. If such request for a hearing be made, the suspension or revocation shall be stayed pending completion of the hearing.

#### **138.10 Sponsoring agency course administration.**

An approved sponsoring agency must:

- (a) perform all administrative functions in connection with the course in accordance with this Part and applicable law;
- (b) approve instructors who are qualified in accordance with the standards set out in Section 138.7 of this Part prior to their teaching the course;
- (c) approve delivery agencies in accordance with standards set out in Section 138.6 of this Part;
- (d) apply to the Department for approval based on standards set out in Section 138.4 of this Part for any proposed additions or deletions to an approved course curriculum;
- (e) allow and enable the Department to audit the program records of the approved course and to monitor and evaluate any and all portions of the program during reasonable business hours;

- (f) notify the Department in writing within thirty (30) business days of any suspension or revocation of approval of a delivery agency or instructor when the suspension or revocation resulted from a violation of any provision of this Part;
- (g) advertise its course in compliance with the requirements set out in Section 138.13 of this Part;
- (h) maintain student completion records for a period of three (3) years and provide duplicate completion certificates if necessary upon request. Student records shall include at least the following information:
  - (1) student's complete name and motorist identification number as it appears on the driver's license;
  - (2) student's date of birth;
  - (3) student's current mailing address;
  - (4) student's dates of enrollment, re-enrollment, if applicable, and course completion;
  - (5) student security document number.
- (i) monitor and oversee actions taken by the delivery agencies and/or instructors with respect to the conduct of the course;
- (j) issue course completion certificates within forty five (45) business days of course completion to each and every motorist who successfully completes the course;
- (k) report each and every motorist who successfully completes the course to the Department within sixty (60) business days of course completion;
- (l) assist the Department in maintaining a database of active delivery agencies and instructors of the sponsoring agency by supplying the Department with a complete list of active delivery agencies and instructors (i.e., those who have taught the course at least once in the prior 12 months) four times annually electronically in a manner prescribed by the Commissioner; Such lists shall include information such as instructor name, address, date of birth, telephone numbers, social security number, date of instructor training, date of approval, date of re-certification, if applicable, delivery agency code, classroom locations and names of delivery agency contact persons;
- (m) comply with the Americans with Disabilities Act to the extent applicable;
- (n) collect class schedules from delivery agencies no less than thirty (30) days prior to holding any class;
- (o) provide the Department, upon request, with a schedule of class dates, times, instructor names, and locations;
- (p) ensure that the course is conducted in a serious and professional manner;
- (q) approve all classroom space in accordance with Section 138.8 of this Part;

- (r) submit to the Department federal employer tax identification numbers and/or federal social security account numbers for all delivery agency owners, managers, instructors and employees of the delivery agency and sponsoring agency, as required by Tax Law § 5(2);
- (s) submit to the Department proof of workers' compensation and/or disability benefits insurance, as required by Workers' Compensation Law and Disability Benefits Law.
- (t) provide each instructor with an instructor manual during instructor training and each student with a workbook during class;
- (u) implement a system of preventing, detecting and responding to allegations of fraud and violations of this Part; This shall include but not be limited to regular on-site monitoring of delivery agencies, instructors, and classroom facilities, contacting a sampling of students to ensure class attendance and quality delivery, reviewing class rosters and sign-in sheets for inaccuracies and peculiarities when submitted by agencies, periodically pull and review records, and do away with pre-signed temporary completion certificates;
- (v) pre-approve receipts to be issued to every student by delivery agencies at the conclusion of the course in lieu of temporary certificates; the receipts are to be used only as an acknowledgment of the payment of course fees and attendance for the minimum number of hours required by law, and shall not be used as a substitute for official completion certificates; such receipts must be legible and include the sponsoring agency's name and telephone number, delivery agency's name and telephone number and code number, class date, time and location, and instructor's full name; and
- (w) monitor all delivery agencies and instructors. In any case where evidence of impropriety exists, the sponsoring agency shall take steps to correct the impropriety. Where allegations of fraudulent or criminal activity (including, but not limited to, false advertising, short classes, issuing completion credit or certificates to those not legally entitled) are presented, the sponsoring agency shall provide timely notification to the Department and, upon request, investigate the matter. A delivery agency or any delivery agency employee or instructor shall not be used as a resource by a sponsoring agency for the purpose of investigating the alleged fraud or criminal activity of delivery agencies or instructors.

### **138.11 Delivery agency course administration.**

A delivery agency approved by a sponsoring agency must:

- (a) perform all administrative functions in connection with the course in accordance with this Part;
- (b) ensure that each course begin with the distribution of a Departmental statement (Form C-32A) to each student describing point and insurance reduction benefits;
- (c) permit only qualified and sponsoring agency-approved instructors to conduct the courses for point and insurance reduction benefits;

- (d) provide the sponsoring agency with all information necessary for the issuance of course completion certificates and for notification to the Department of each motorist who completes the course; This information must be submitted in accordance with the requirements of the sponsoring agency;
- (e) refund any tuition collected from persons enrolled in the course in any case in which the course is not conducted;
- (f) allow the Department both to audit the program records of the approved course and to monitor and evaluate any and all portions of the program;
- (g) advertise its course in compliance with the requirements set forth in Section 138.13 of this Part;
- (h) provide the sponsoring agency with a schedule of class dates, locations, times and instructor names no less than thirty (30) days prior to holding any class; Delivery agencies are not permitted to hold a class unless this requirement has been met. Under no circumstance may any delivery agency or instructor use a classroom facility that has not been approved by the sponsoring agency in accordance with section 138.8 of this part;
- (i) have an instructor approved by the sponsoring agency teach each course conducted in accordance with section 138.7 of this part;
- (j) have, and make available upon request, written policies and procedures for handling student records for the course;
- (k) not allow any person to conduct a course who is not employed by the sponsor-approved delivery agency and approved by the sponsoring agency;
- (l) allow the Department and/or the sponsoring agency to make periodic inspections of classroom facilities;
- (m) cooperate with representatives of the Department and/or sponsoring agency and upon request, exhibit all records, instructional aids or such materials as may be requested;
- (n) retain a roster of each class for a period of three (3) years. The roster shall include the name of the attending motorist, printed legibly, and signed. Motorists shall sign the roster sheet at the beginning of class and when returning to class after each break. If the class is administered in two sessions, the attending motorist shall sign the roster for each session;
- (o) comply with the Americans with Disabilities Act to the extent applicable;
- (p) submit to the sponsoring agency federal employer tax identification numbers and/or federal social security account numbers of all delivery agency managers, owners, operators, officers, partners, employees or instructors;
- (q) submit to the Department proof of workers' compensation insurance for all delivery agencies who employ a number of employees as required under Workers' Compensation Law; and

- (r) sign the following statement, which each sponsoring agency shall have printed on every class attendance roster, to be signed by the course instructor and delivery agency representative, if different from one another. The statement shall read: "Under penalty of law, I attest to the fact that the motorists whose names and signatures appear on this class attendance roster have successfully completed the number of hours as required under Article 12-B of the Vehicle and Traffic Law, and that any false information on this roster will be used as evidence in a court of law and/or administrative proceeding."

### **138.12 Monitoring course and instructors.**

- (a) Sponsoring agencies and delivery agencies shall allow and cooperate with the Department's supervision and monitoring of motor vehicle accident prevention courses conducted for point and insurance reduction benefits in order to maintain high course standards and to insure the integrity of the program. Monitoring of programs by the Department, the sponsoring agency and the delivery agencies shall encompass the following areas:
  - (1) the parameters of program delivery - to insure adherence to a sponsoring agency's approved course, use of visual aids, classroom time spent by the instructors, and other measures to insure that the participant receives a complete and effective course in full compliance with all applicable laws and regulations;
  - (2) professional assessment and critique of the instructor's presentation, communication skills, active learning techniques, classroom management, and teacher effectiveness, to insure quality of instruction as a means of achieving the purpose of reducing highway fatalities, injuries, and property damage.
- (b) The Department and/or the sponsoring agency will determine the necessity for periodic seminars or other upgrading activities to assist an instructor or instructors in improving presentation.
- (c) The sponsoring agency shall conduct a minimum six (6) hour in-service, classroom workshop at least once every two (2) years to update all approved instructors on course revisions, instructional methodologies, changes in applicable state laws/regulations and administrative procedures. A record of workshop attendance shall be kept on file with the sponsoring agency for a period of at least three (3) years.

### **138.13 Course advertising.**

- (a) Any form of advertising (including verbal or written statements, promotional materials, brochures, leaflets, newspaper and magazine ads, yellow page ads, radio and television publicity, receipts, Internet web pages, or any other medium which makes reference to the accident prevention course or point and insurance reduction benefits) by a sponsoring agency and/or delivery agency must conform with all of the following standards:

- (1) A sponsoring agency is responsible for the content of the advertising of its delivery agencies with regard to the point and insurance reduction program. Sponsoring agencies shall review and approve all delivery agency advertising to ensure compliance with this Part or provide pre-approved advertising materials for delivery agencies to use.
- (2) All advertising must indicate that the course is six (6) hours in length.
- (3) Point/Insurance Reduction Program advertising shall not be combined with any other advertising such as driving school or insurance agency advertising unless it has been approved by the sponsoring agency in order to protect the public from potentially confusing or misleading information.
- (4) No sponsoring agency, delivery agency, instructor or employee may publish, advertise or imply that the completion of the course conducted for point reduction will result in the "erasing" or "masking" of any information from a motorist's driving record. Communication with course participants must clearly indicate that while certain Departmental administrative actions based upon a motorist's point accumulation may be prevented, all traffic convictions will continue to be displayed on the motorist's driving record.
- (5) No sponsoring agency, delivery agency, instructor or employee may make false or misleading claims or statements in any of its advertisements.
- (6) All course advertising must identify the sponsoring agency and delivery agency.
- (7) Any material in Departmentally produced literature may be quoted without attribution, provided the quote retains its original meaning. Any presentation of Departmental material which implies or creates a meaning other than the meaning offered by the Department is prohibited.
- (8) The only acceptable reference to the Department is that the sponsoring agency's course is approved by the New York State Department of Motor Vehicles. Words which convey partnership, such as "in cooperation with," "supervised by," "recommended by," or "endorsed by" the Department of Motor Vehicles may not be used. No sponsoring agency, delivery agency, instructor or employee shall falsely advertise or represent itself to be an agent or employee of the Department or of New York State unless the sponsoring agency is a State agency or the State agency is an approved delivery agency offering courses to its employees. No delivery agency may use the words "DMV approved" in their advertising unless they specifically state that the sponsoring agency's course has been approved by the DMV for point and insurance reduction purposes.
- (9) No sponsoring agency or delivery agency shall conduct business or display or distribute any advertising material within a building owned or leased by the State or county in which motor vehicle registrations or licenses are issued to the public.
- (10) No organization shall advertise point or insurance reduction benefits in any manner until such time as such advertising has been approved in accordance with this Part.

- (11) No sponsoring agency or delivery agency shall use any name other than its approved name for advertising or publicity purposes. No delivery agency may use the words “driving school” unless it is licensed in accordance with Part 76 of the Commissioner’s Regulations.
- (12) A copy, recording or videotape of any advertisement shall be kept on file by a sponsoring agency or delivery agency for three (3) years along with a record of when and where it was used or distributed;
- (13) Advertising shall reflect the serious nature of the motor vehicle accident prevention course and, in no way, either through the text of the advertisement or through the name of the course, diminish the subject matter of the course. Advertising shall not refer to gimmicks or enticements, such as comedy or free gifts, or to any benefits other than point and insurance reduction.
- (14) Permission to re-publish any content of the Department’s web site shall be obtained from the Department’s Internet Office. The Department will provide an image to use as a link to the site. The Department’s web site may not be placed within any other web site frames.
- (15) Comparative statistics or claims which state or imply that one sponsoring agency is more effective than another are not to be used. The effectiveness of one sponsoring agency’s approved course may not be statistically compared to another approved course.
- (16) No implicit or explicit claims which are not supported by documentation are permissible. Such documentation and the proposed advertising must be reviewed and approved by the sponsoring agency in accordance with the standards of this section before they may be used.
- (17) Sponsoring agencies or delivery agencies should consider including the following topic guidelines in their advertising:
  - (i) Persons are eligible once in 18 months for point reduction, even if the point reduction benefit is not used. Points which are reduced remain on a motorist’s record, but are not counted by the Department in determining further administrative actions against the license.
  - (ii) Point reduction does not affect mandatory action such as license revocation for three speeding convictions within 18 months.
  - (ii) Point reduction does not affect suspensions or revocations already in place.
- (18) Insurance reduction:
  - (i) The only acceptable reference to insurance reduction is that successful completion of the course provides a 10% reduction, for three years, in the base rate of the motorist’s current automobile liability, no-fault and collision premiums.
  - (ii) Quotes or references to specific dollar amounts saved are not acceptable.

- (iii) Implicit or explicit claims that reduction may be less than or greater than 10% annually are not acceptable.
  - (iv) No implicit or explicit claim may be made that repeating the course more frequently than once every three (3) years yields an improvement over the 10% reduction in liability and collision insurance rates for each three (3) consecutive years.
  - (v) Any statement must include the requirement that the person completing a course must be the principal operator of the insured vehicle in order to be eligible for reduction.
- (b) The Department reserves the right to review and approve all advertising based on the standards set out in this section.