

# ARKANSAS REGISTER



## Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**

Secretary of State

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For Office

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Effective Date \_\_\_\_\_ Code Number \_\_\_\_\_

Name of Agency Division of Arkansas State Police

Department Department of Public Safety

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Rule Title: Third Party Testing Requirements Rules Amendments

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Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Mary Claire McLaurin mary.claire.mclaurin@asp.arkansas.gov

1/17/2020

Contact Person

E-mail Address

Date

### CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted  
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Signature

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Attorney

Title

1/17/2020

Date

2020 JAN 17 PM 4:52

DIVISION OF ARKANSAS STATE POLICE  
THIRD PARTY TESTING REQUIREMENTS

I. PURPOSE

The purpose of this document is to explain the requirements for conducting Commercial Driver License skills tests as a Third Party Tester. Authority to administer skills tests is granted only to Third Party Testers who both utilize third party examiners certified by the Division and enter into an agreement with the Division. As a secondary matter, this document will be incorporated by reference into each agreement.

II. DEFINITIONS

A. Division: The Division of Arkansas State Police

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C. FMCSA: Federal Motor Carrier Safety Administration

D. Third Party Tester: A government entity, an association, a school district, an educational co-op, an educational institution or a business entity engaged in the use of commercial motor vehicles and certified by the Division to administer an approved testing program for CDL applicants in accordance with the requirements within.

E. Approved Testing Program: The CDL skills tests which are required by the Division and are administered by third party testers.

F. Third Party Tester Certificate: That document which is issued to a third party tester in order to verify the tester is authorized to administer an approved testing program on behalf of the Division.

G. Third Party Examiner Certificate: That document issued by the Division to indicate that a person has been approved as a qualified examiner, and evidencing authority to conduct the skills tests required for obtaining a CDL.

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III. GENERAL PROVISIONS

A. Administration and Enforcement:

The Division shall administer and enforce the State of Arkansas third party testing program.

B. Employment of Division Employees:

No third party tester shall engage the services of any employee of the Division as an agent, examiner or employee in its third party testing program.

#### IV. REQUIREMENTS FOR THIRD PARTY TESTERS

A. In order to receive and maintain a third party tester certification, a third party tester must meet all of the following conditions.

1. Make application to and enter into agreement with the Division, as described in Section VI B of this document.

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5. Have at least one (1) full-time employee certified by the Division as a third party examiner.

6. Designate an individual who will be responsible for its third party testing operation and inform the Division of that designation. This individual may also be the third party examiner.

7. Allow the Division and/or the FMCSA or its representatives to conduct random examinations, inspections and audits of its operating facilities and records, as they relate to its third party testing program, without prior notice.

8. Allow the Division to conduct annual on-site inspections, evaluations and audits of its operations, facilities and records.

9. Maintain at each approved third party testing location, for at least three (3) years, copies of all records of every CDL skills test administered by the third party tester pursuant to these requirements on the forms obtained from the Division.

10. Transmit the records described in Section IV A (9), for the previous months testing, to the Division by the 10<sup>th</sup> of each month.

11. Maintain at each approved third party testing location, a record of each third party examiner employed by the third party tester at that location. Each record shall include all of the following:

- a. A valid "examiner certificate" indicating the third party examiner has met all Division qualifications.

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13. Ensure that skills tests are conducted in accordance with all legal requirements and in accordance with test specifications and procedures prescribed by the Division.

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16. Require each third party examiner employed by the third party tester to attend all advanced training courses, workshops, seminars and other instructional meetings, as required by the Division.

17. Allow at least annually, Division employees to take tests actually administered by the third party tester as if the employee were an applicant, or allow the Division to test a sample of drivers who were examined by the third party tester to compare pass/fail results.

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## V. REQUIREMENTS FOR THIRD PARTY EXAMINERS

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B. To qualify and maintain qualification as a third party examiner, an applicant must meet all of the following qualifications:

1. File and maintain with the Division an approved third party examiner application on behalf of the applicant by an authorized third party tester and the approval has not been suspended, cancelled or revoked.

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4. Have successfully completed a CDL examiner training course conducted by the Division, or an equivalent course as determined by the Division.

5. Attend all advanced training courses, workshops, seminars and other instructional meetings, as required by the Division.

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8. The applicants driving record does not indicate he or she may be incompetent to operate a motor vehicle safely, as determined by the Division.

9. Have at least three (3) year's experience as a commercial motor vehicle operator or equivalent experience as determined by the Division.

10. Conduct skills tests on behalf of the third party tester, in accordance with all legal requirements and in accordance with test specifications and procedures prescribed by the Division.

11. Submit to auditing and testing as required by the Division.

## VI. CERTIFICATES

A. General Requirements:

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3. The certificate issued by the Division to operate a third party testing program and the examiner certificate issued by the Division to each qualified employee must be prominently displayed in the place of business of the third party tester.

4. The examiner must surrender the examiner certificate to the Division when he or she leaves the employ of the third party tester, when the examiner is no longer assigned third party examiner duties by the third party tester, or when the certificate has been cancelled.

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7. All renewal application forms must be filed with the Division not less than thirty (30) days prior to the time the certificate or agreement expires. The Division is not responsible for the timely issuance of any renewal certificate or renewal agreement when the application is not received within the necessary timeframe.

**B. Application for Third Party Tester Certification:**

1. An application for third party tester certification shall be filed with the Division on a form prescribed by the Division.

2. An applicant for a third party tester certificate shall enter into a third party agreement, the form and content of which shall be prescribed by the Division.

**C. Application for Third Party Examiner Certification:**

The third party tester must apply for examiner certification on behalf of persons in their employ on a form prescribed by the Division.

**VII. EVALUATION OF APPLICANTS BY THE DIVISION**

A. The Division will evaluate the written application submitted by the third party tester, and if satisfactory, the Division will schedule an on-site inspection and audit of the applicants third party testing program.

B. The Division will evaluate the written application submitted on behalf of the third party examiner, including the individuals driving record. If satisfactory, the Division will schedule the prospective examiner for third party examiner training. Training may be waived if the examiner is seeking another certificate only because he or she has changed jobs.

**VIII. CERTIFICATION BY THE DIVISION**

A. Upon successful application and evaluation, a third party tester must execute a written agreement prescribed by the Division to administer CDL skills tests. Upon return of the agreement to the Division, the third party tester will be issued a certificate by the Division evidencing the tester's authority to administer a third party testing program for the classes and type vehicles listed. The certificate must be prominently displayed at the approved testing facility.

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C. Certificates and agreements will remain valid for one (1) year from the date they were issued or until cancelled by the Division or voluntarily relinquished by the third party tester or examiner.

#### IX. ON-SITE INSPECTIONS AND AUDITS

A. Each applicant for a third party tester certificate shall permit the Division and/or the FMCSA to inspect and audit its operations, facilities and records as they relate to its third party testing program, for the purpose of determining whether the applicant is qualified to be certified.

B. A third party tester who has been certified and has executed an agreement shall permit the Division and/or the FMCSA to inspect its third party testing program to determine whether it remains in compliance with all legal requirements.

C. The Division and/or the FMCSA may perform its inspections and audits with or without prior notice to the third party tester.

D. Inspections and audits will include, at a minimum, an examination of:

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6. Effectiveness of the skills tests program by either testing a sample of drivers who have passed the skills tests administered by the third party tester or by having Division employees or designees take the skills tests from a third examiner employed by the third party tester.

7. Any other aspect of the third party testers operation that the Division determines is necessary to verify the third party tester meets all applicable requirements.

#### X. PROFESSIONAL CONDUCT

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B. An examiner, employee or agent of the third party tester may not solicit any individual on premises rented, leased or owned by the Division for the Purpose of enrolling that individual in any third party testing program.

## XI. ADVERTISING

A. No advertising shall indicate in any way that the third party tester can issue or guarantee the issuance of a CDL or imply that the third party tester can in any way influence the Division in the issuance of a CDL or imply that preferential treatment from the Division can be obtained.

B. Third party testers that are in fact certified by the Division may in their advertising state that they are “certified”, but shall not indicate that the tester is approved, sanctioned or in any way endorsed by the Division and shall not use any other name besides the name on its application for certification, nor shall the tester use “state” in any part of its name.

## XII. INSURANCE REQUIREMENTS

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C. As evidence of required insurance coverage, the third party tester must file with the Division either a certificate of insurance issued by an insurance company or surety company authorized to do business in Arkansas or a certificate of self-insurance issued by the Officer of Driver Services.

D. A third party tester must not use a motor vehicle owned or registered by the third party to administer skills tests unless evidence of insurance coverage for the vehicle has been filed with the Division.

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F. The Division reserves the right to cancel the agreement with the third party tester upon determining the third party tester has failed to file a certificate of insurance or self-insurance or has failed to maintain insurance coverage.

G. The third party tester must agree to indemnify and hold harmless the State of Arkansas, the Division, and all of its officers, employees and agents, from any and all rights, causes of action, claims, demands, suits or liabilities, arising from, based upon, occasioned by or attributable to any act or omission of the third party tester or the third party tester’s agents, examiners or other employees in the performance of the agreement.

## XIII. NOTIFICATION REQUIREMENTS

A. The third party tester must:

1. Notify the Division in writing within thirty (30) days prior to any change in the tester’s name or address.

2. Notify the Division in writing within ten (10) days of any of the following:

a. Any change in the employment of any person authorized by the Division to be a third party examiner for the tester.

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B. The third party examiners must notify the Division and his or third party tester as follows.

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#### XIV. TEST ADMINISTRATION

A. CDL skills tests shall be conducted strictly in accordance with the provisions of law and the test specifications and procedures prescribed in the Third Party Examiner Manual provided by the Division.

B. CDL skills tests shall be conducted:

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2. Using Division approved content, forms, and scoring procedures.

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#### XV. DENIAL/TERMINATION OF THIRD PARTY TESTING PROGRAM

A. The Division may deny any application for a third party tester certificate/agreement or examiner certificate, if the applicant or examiner does not qualify for the certificate under the requirements of the third party testing program. A misstatement or misrepresentation of a material fact may be grounds for denying an agreement or certificate.

B. Any third party tester may relinquish its certificate and agreement upon thirty (30) day's notice to the Division.

C. The Division reserves the right to change or cancel the third party testing program as described in these requirements.

D. The Division may cancel the certificate of and agreement with a third party tester or examiner after determining the tester or examiner has done one (1) or more of the following:

1. Has failed to comply with or satisfy any of the provisions of the agreement or the Division's instructions relating to the agreement.

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E. If the Division determines that grounds for cancellation exist and that they relate to a failure to comply with or satisfy any of the requirements for a certificate or for a



third party tester agreement, the Division may postpone cancellation and allow the third party tester thirty (30) days to correct the deficiency.