

# ARKANSAS REGISTER

AR. REGISTER DIV.

96 JAN -8 PM 2:58 Transmittal Sheet



SHARON PRIEST  
SECRETARY OF STATE  
STATE OF ARKANSAS

Sharon Priest  
Secretary of State  
State Capitol Rm. 01  
Little Rock, Arkansas 72201-1094

For Office Use Only: Effective Date 1/17/96 Code Number 130.00.96--001

Name of Agency ARKANSAS STATE POLICE

Department HIGHWAY PATROL/CDL

Contact Person James R. Edwards Phone (501) 221-8230

Statutory Authority for Promulgating Rules Act 654 of 1995

	Date
Intended Effective Date	Legal Notice Published . . . . . <u>Nov 10-16, 95</u>
<input type="checkbox"/> Emergency	Final Date for Public Comment . . . . . <u>Dec 8, 1995</u>
<input checked="" type="checkbox"/> 10 Days After Filing	Filed With Legislative Council . . . . . <u>Nov 8, 1995</u>
<input type="checkbox"/> Other	Reviewed by Legislative Council . . . . . <u>Jan 4, 1996</u>
	Adopted by State Agency . . . . . <u>Jan 1, 1996</u>

## CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted  
In Compliance with Act 434 of 1967 As Amended.

  
Signature

(501) 221-8200  
Phone Number

DIRECTOR, ARKANSAS STATE POLICE  
Title

January 8, 1996  
Date

FILED  
AR. REGISTER DIV.

DEPARTMENT ARKANSAS STATE POLICE  
DIVISION HIGHWAY PATROL/COMMERCIAL DRIVER LICENSES  
PERSON COMPLETING THIS STATEMENT JAMES EDWARDS  
TELEPHONE NO. (501) 221-8230 FAX NO. (501) 224-5006

HARON PRIEST  
SECRETARY OF STATE  
STATE OF ARKANSAS

FINANCIAL IMPACT STATEMENT

BY \_\_\_\_\_

To comply with Act 884 of 1995, please complete the following Financial Impact Statement and file with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE CDL Third Party Testing Requirements

1. Does this proposed, amended, or repealed rule or regulation have a financial impact? Yes XX No \_\_\_\_\_
2. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.
3. If the purpose of this rule or regulation is to implement a federal rule or regulation, please give the incremental cost for implementing the regulation.

1995-96 Fiscal Year

1996-97 Fiscal Year

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other \_\_\_\_\_  
Total \_\_\_\_\_

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other \_\_\_\_\_  
Total \_\_\_\_\_

4. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule or regulation?

1995-96 Fiscal Year

1996-97 Fiscal Year

\$200.00-\$600.00

\$150.00-\$600.00

5. What is the total estimated cost by fiscal year to the agency to implement this regulation?

1995-96 Fiscal Year

1996-97 Fiscal Year

\$59,400.00

\$62,370.00

July 28, 1995

**DEPARTMENT OF ARKANSAS STATE POLICE**  
**THIRD PARTY TESTING REQUIREMENTS**

FILED

ADULT PROTECTIVE DIV.

APR 10 2: 59 PM

SHARON PRIEST  
SECRETARY OF STATE  
STATE OF ARKANSAS  
BY \_\_\_\_\_

**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 Department and enter into an agreement with the Department. As a secondary matter, this document will be incorporated by reference into each agreement.

**II. DEFINITIONS**

The following words and terms, when used in this document, shall have the following meanings:

A. Department: The Department of Arkansas State Police

B. CDL: Commercial Driver License

C. FHWA: Federal Highway 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 Department 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 Department 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 Department.

G. Third Party Examiner Certificate: That document issued by the Department 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.

H. Third Party Examiner: A full-time employee of the third party tester who has been issued a third party examiner certificate authorizing him or her to conduct CDL skills tests.

### **III. GENERAL PROVISIONS**

#### **A. Administration and Enforcement:**

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

#### **B. Employment of Department Employees:**

No third party tester shall engage the services of any employee of the Department 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 an agreement with the Department, as described in Section VI B of this document.
2. Continuously maintain a place of business, located within the State of Arkansas, at which third party skills tests can be administered; and containing at least one (1) permanent, regularly occupied structure in which administrative and/or operational business is conducted. This cannot be a residence.
3. The business location shall be accessible by public telephone and shall have an established, permanent mailing address including a street address or route.
4. Ensure that its place of business is safe and meets all requirements of state and federal law and local ordinances.
5. Have at least one (1) full-time employee certified by the Department as a third party examiner.
6. Designate an individual who will be responsible for its third party testing operation and inform the Department of that designation. This individual may also be the third party examiner.
7. Allow the Department and/or the FHWA 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 Department to conduct annual on-site inspections, evaluations and audits of its operations, facilities and records.

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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 Department.

10. Transmit the records described in Section IV A (9), for the previous months testing, to the Department by the 10th 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 Department qualifications.
- b. A copy of the third party examiners current driving record, which must be updated semi-annually.
- c. Evidence that the third party examiner is a full-time payroll employee of the third party tester.

12. Retain all third party examiner records for at least three (3) years.

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

14. Provide written certification, utilizing the CDL 1 form, to each driver-applicant taking the CDL skills tests administered by the third party tester.

15. Prominently display at the testing site, the "third party testers certificate" and the "examiner certificate" of each third party examiner employed at that location.

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 Department.

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

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**B.** In addition to the requirements listed above, a third party tester must meet one (1) or more of the following conditions:

1. Be a state agency or political subdivision which employs at least fifty (50) persons having a valid Arkansas CDL.
2. Be a public university, college, community college, junior college or vocational/technical school offering a CDL program.
3. Be a school district which owns/leases at least thirty (30) school buses.
4. Be an educational co-op or a recognized industry association of trucking/bus companies in Arkansas which represents at least fifty (50) commercial vehicle drivers with a valid Arkansas CDL.
5. Be an individual, firm, partnership, corporation or other legal business entity:
  - a. Which employs at least fifty (50) commercial vehicle drivers having a valid Arkansas CDL or is a private driver training facility licensed by the Arkansas State Board of Private Career Education, and
  - b. If subject to the Federal Motor Carrier Regulations, maintain a current U.S. Department of Transportation safety rating of "satisfactory."

## **V. REQUIREMENTS FOR THIRD PARTY EXAMINERS**

**A.** A third party examiner may conduct skills tests on behalf of no more than one (1) third party tester. Third party testers must apply for "examiner certification" on behalf of each person in their employ seeking to become a third party examiner. If a third party examiner leaves the employ of a third party tester, he/she must be approved for a new examiner certificate in order to conduct tests on behalf of another third party tester.

**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 Department 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.
2. Be a full-time employee of the third party tester who filed his or her third party examiner application.
3. Must be at least twenty-one (21) years of age and hold a valid Arkansas CDL with the classification and endorsements required for operation of the commercial motor vehicle used in the skills tests conducted by the third party examiner.
4. Have successfully completed a CDL examiner training course conducted by the Department, or an equivalent course as determined by the Department.
5. Attend all advanced training courses, workshops, seminars and other instructional meetings, as required by the Department.
6. The applicant has not had a conviction, civil infraction determination, or administrative adjudication for any of the following violations under Arkansas law or a local ordinance substantially corresponding to Arkansas law or a law or local ordinance of another state substantially corresponding to Arkansas law during the last three (3) years:
  - a. Operating a motor vehicle while intoxicated or under the influence of a controlled substance, or both.
  - b. Refusal to submit to a chemical test to determine the alcohol or controlled substance level of his or her blood.
  - c. Negligent homicide or involuntary manslaughter involving a motor vehicle.
  - d. Racing on a highway
  - e. Reckless driving
  - f. Any felony in the commission of which a motor vehicle was used.
  - g. Failure to stop and identify self or render aid after a personal injury.
  - h. No proof of insurance.

7. During the three (3) year's period preceding application:

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- a. The applicant's driver license has not been suspended, revoked, denied, cancelled, or disqualified, or subject to any driver improvement action ordered by the Office of Driver Services or a Court.
  - b. The applicant has not been convicted or determined responsible for any traffic violation in relation to more than one (1) motor vehicle accident.

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

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

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 Department.

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

## **VI. CERTIFICATES**

### **A. General Requirements:**

1. A certificate will be issued to qualified persons or entities evidencing the third party testers entry into an agreement to operate an approved testing program to give skills tests to CDL applicants.

2. An "examiner certificate" will be issued with respect to qualified employees of the third party tester.

3. The certificate issued by the Department to operate a third party testing program and the examiner certificate issued by the Department 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 Department 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.



5. Agreements to administer third party testing programs, third party tester certificates, and third party examiner certificates are nonassignable.

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6. Each agreement and certificate shall become effective on the date of issuance and shall expire one (1) year from the effective date.

7. All renewal application forms must be filed with the Department not less than thirty (30) days prior to the time the certificate or agreement expires. The Department 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 Department on a form prescribed by the Department.
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 Department.

**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 Department.

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

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

**B.** The Department will evaluate the written application submitted on behalf of the third party examiner, including the individuals driving record. If satisfactory, the Department 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 DEPARTMENT**

**A.** Upon successful application and evaluation, a third party tester must execute a written agreement prescribed by the Department to administer CDL skills tests. Upon return of the agreement to the Department, the third party tester will be issued a certificate by the Department 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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**B.** Upon successful application, evaluation and training, an examiner certificate will be issued evidencing a third party examiner's authority to conduct CDL skills tests for the classes and types of vehicles listed. The certificate must be prominently displayed at the approved test facility.

**C.** Certificates and agreements will remain valid for one (1) year from the date they were issued or until cancelled by the Department 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 Department and/or the FHWA 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 Department and/or the FHWA to inspect its third party testing program to determine whether it remains in compliance with all legal requirements.

**C.** The Department and/or the FHWA 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:

1. Records relating to the third party testing program.
2. Evidence of compliance with Federal Motor Carrier Safety Regulations
3. Skills testing procedures, practices and operations.
4. Vehicles used for testing.
5. Qualifications of third party examiners.
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 Department 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 Department determines is necessary to verify the third party tester meets all applicable requirements.

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## **PROFESSIONAL CONDUCT**

A. An examiner, employee or agent of the third party tester may not assist any CDL applicant for the purpose of completing a license application or taking a knowledge or skills test or other driver examination.

B. An examiner, employee or agent of the third party tester may not solicit any individual on premises rented, leased or owned by the Department 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 Department in the issuance of a CDL or imply that preferential treatment from the Department can be obtained.

B. Third party testers that are in fact certified by the Department 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 Department 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**

A. Each third party tester must maintain bodily injury and property damage liability insurance coverage on motor vehicles owned or registered by the third party tester while used to administer CDL skills tests. Insurance coverage must be in at least such amounts as required by a applicable State and Federal Law.

B. Each third party tester must maintain insurance coverage which does not exclude from coverage any person while taking the skills tests administered by the third party tester, any person suffering bodily injury sustaining property damage as a result of skills tests administered by the third party tester, or any person employed by the third party tester to administer skills tests.

C. As evidence of required insurance coverage, the third party tester must file with the Department 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 Office of Driver Services.

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

E. The third party tester must not use motor vehicles to administer skills tests unless the owner or registrant of the vehicle produces a certificate of insurance for the vehicle issued by an insurance company or surety company authorized to do business in Arkansas or unless the owner or registrant produces a certificate of self-insurance issued by the Office of Driver Services.

F. The Department 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 Department, 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 Department in writing within thirty (30) days prior to any change in the tester's name or address.
2. Notify the Department in writing within ten (10) days of any of the following:
  - a. Any change in the employment of any person authorized by the Department to be a third party examiner for the tester.
  - b. Notice received by the tester with respect to any conviction, civil infraction determination, or administrative adjudication, of any of the tester's third party examiners for violation of a law or local ordinance of any state relating to the operation of a motor vehicle (other than parking violations).

c. Notice received by the tester with respect to any suspension, revocation, cancellation, disqualification, or driver improvement action ordered by a Court or the Office of Driver Services, imposed upon the driver license of any third party examiner in the tester's employ.

d. The tester ceases business operations in Arkansas.

**B.** The third party examiners must notify the Department and his or third party tester as follows:

1. Before the end of the next business day after the examiner receives notice of any suspension, revocation, cancellation or disqualification of his or her driver license, or any driver improvement action ordered by a Court or the Office of Driver Services.

2. Within ten (10) days after being convicted or found responsible for violation of a law or local ordinance of any state relating to the operation of a motor vehicle (other than a parking violation).

#### **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 Department.

**B.** CDL skills tests shall be conducted:

1. In a vehicle which is representative of the class and type of vehicle for which the CDL applicant seeks to be licensed and for which the third party examiner is qualified to test. The vehicle shall not contain explosives or other hazardous material. Prior to testing, the examiner shall inspect the vehicle to verify that it meets all motor carrier safety regulations and is otherwise safe to operate.

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

3. On Arkansas roads and highways.

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

**A.** The Department 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.

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

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

**D.** The Department 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 Department's instructions relating to the agreement.
2. Has falsified any record of information relating to the third party testing program.
3. Has committed any act or omission which compromises the integrity of the third party testing program.
4. Continues to employ a third party examiner who does not have a valid Arkansas CDL, whose Arkansas CDL has been suspended or revoked, whose examiner certificate has been cancelled, or whose application for an Arkansas CDL has been denied.

**E.** If the Department 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 Department may postpone cancellation and allow the third party tester thirty (30) days to correct the deficiency.

### THIRD PARTY TESTING FEE SCHEDULE

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THIRD PARTY TESTER APPLICATION FEE	\$100.00
THIRD PARTY TESTER RENEWAL FEE	\$100.00
THIRD PARTY EXAMINER APPLICATION FEE (INCLUDES TRAINING)	
FORTY HOUR COURSE (REQUIRED FOR NEW EXAMINERS)	\$500.00
EIGHT HOUR COURSE (REQUIRED FOR PREVIOUSLY TRAINED EXAMINERS)	\$100.00
THIRD PARTY EXAMINER RENEWAL FEE	\$50.00

ALL FEES ARE NON-REFUNDABLE