

Title 27. Transportation

Chapter III. Division of Arkansas State Police, Department of Public Safety

Subchapter A. Generally

Part 51. Commercial Driver's License Third-Party Testing Requirements

Subpart 1. Generally

27 CAR § 51-101. Purpose.

(a) The purpose of this part is to explain the requirements for conducting commercial driver's license skills tests as a third-party tester.

(b) Authority to administer skills tests is granted only to third-party testers who both:

(1) Use third-party examiners certified by the Division of Arkansas State Police;
and

(2) Enter into an agreement with the division.

(c) As a secondary matter, this part will be incorporated by reference into each agreement.

Authority. Arkansas Code § 27-23-108.

27 CAR § 51-102. Definitions.

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

(1) "Approved testing program" means the CDL skills tests which are:

(A) Required by the Division of Arkansas State Police; and

(B) Administered by third-party testers;

(2) "CDL" means commercial driver's license;

(3) "Division" means the Division of Arkansas State Police;

(4) "FMCSA" means the Federal Motor Carrier Safety Administration;

(5) "Third-party examiner" means 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;

(6) "Third-party examiner certificate" means that document issued by the Division of Arkansas State Police:

(A) To indicate that a person has been approved as a qualified examiner; and

(B) Evidencing authority to conduct the skills tests required for obtaining a CDL;

(7) "Third-party tester" means a government entity, an association, a school district, an educational cooperative, an educational institution, or a business entity:

(A) Engaged in the use of commercial motor vehicles; and

(B) Certified by the Division of Arkansas State Police to administer an approved testing program for CDL applicants in accordance with the requirements within; and

(8) "Third-party tester certificate" means 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 of Arkansas State Police.

Authority. Arkansas Code § 27-23-108.

27 CAR § 51-103. General provisions.

(a) **Administration and enforcement.** The Division of Arkansas State Police shall administer and enforce the State of Arkansas's 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.

Authority. Arkansas Code § 27-23-108.

27 CAR § 51-104. 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 of Arkansas State Police, as described in 27 CAR § 51-106(b);

(2)(A) 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.

(B) This cannot be a residence;

(3) The business location shall:

(A) Be accessible by public telephone; and

(B) Have an established, permanent mailing address including a street address or route;

(4) Ensure that its place of business:

(A) Is safe; and

(B) Meets all requirements of state and federal law and local ordinances;

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

(6)(A) Designate an individual who will be responsible for its third-party testing operation and inform the division of that designation.

(B) This individual may also be the third-party examiner;

(7) Allow the division and/or the Federal Motor Carrier Safety Administration 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:

(A) Operations;

(B) Facilities; and

(C) 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 subdivision (a)(9) of this section, for the previous month's testing, to the division by the tenth day of each month;

(11)(A) Maintain at each approved third-party testing location a record of each third-party examiner employed by the third-party tester at that location.

(B) Each record shall include all of the following:

(i) A valid examiner certificate indicating the third-party examiner has met all division qualifications;

(ii) A copy of the third-party examiner's current driving record, which must be updated semi-annually; and

(iii) 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:

(A) All legal requirements; and

(B) Test specifications and procedures prescribed by the division;

(14) Provide written certification, using 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 tester 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 division; and

(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.

(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 cooperative 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; or

(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 State Board of Private Career Education; and

(B) If subject to the Federal Motor Carrier Safety Regulations, maintain a current United States Department of Transportation safety rating of "satisfactory".

Authority. Arkansas Code § 27-23-108.

27 CAR § 51-105. Requirements for third-party examiners.

(a)(1) A third-party examiner may conduct skills tests on behalf of no more than one (1) third-party tester.

(2) Third-party testers must apply for examiner certification on behalf of each person in their employ seeking to become a third-party examiner.

(3) 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 Division of Arkansas State Police 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) A CDL examiner training course conducted by the division; or

(B) 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;

(6) The applicant has not had a conviction, civil infraction determination, or administrative adjudication for any of the following violations under Arkansas law, 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;

or

(H) No proof of insurance;

- (7) During the three-year period preceding application:
- (A) The applicant's driver's license has not been:
 - (i) Suspended;
 - (ii) Revoked;
 - (iii) Denied;
 - (iv) Cancelled;
 - (v) Disqualified; or
 - (vi) Subject to any driver improvement action ordered by the Office of Driver Services or a court; and
 - (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 applicant's 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) years' 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:
- (A) All legal requirements; and
 - (B) Test specifications and procedures prescribed by the division; and
- (11) Submit to auditing and testing as required by the division.

Authority. Arkansas Code § 27-23-108.

27 CAR § 51-106. Certificates.

(a) **General requirements.**

(1) A certificate will be issued to qualified persons or entities evidencing the third-party tester's 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 Division of Arkansas State Police 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:

(A) He or she leaves the employ of the third-party tester;

(B) The examiner is no longer assigned third-party examiner duties by the third-party tester; or

(C) The certificate has been cancelled.

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

(6) Each agreement and certificate shall:

(A) Become effective on the date of issuance; and

(B) Expire one (1) year from the effective date.

(7)(A) 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.

(B) 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.

Authority. Arkansas Code § 27-23-108.

27 CAR § 51-107. Evaluation of applicants by the Division of Arkansas State Police.

(a) The Division of Arkansas State Police will evaluate the written application submitted by the third-party tester, and if satisfactory, the division will schedule an:

- (1) On-site inspection; and
- (2) Audit of the applicant's third-party testing program.

(b)(1) The division will evaluate the written application submitted on behalf of the third-party examiner, including the individual's driving record.

(2)(A) If satisfactory, the division will schedule the prospective examiner for third-party examiner training.

(B) Training may be waived if the examiner is seeking another certificate only because he or she has changed jobs.

Authority. Arkansas Code § 27-23-108.

27 CAR § 51-108. Certification by the Division of Arkansas State Police.

(a)(1) Upon successful application and evaluation, a third-party tester must execute a written agreement prescribed by the Division of Arkansas State Police to administer CDL skills tests.

(2) 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 of vehicles listed.

(3) The certificate must be prominently displayed at the approved testing facility.

(b)(1) 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.

(2) The certificate must be prominently displayed at the approved test facility.

(c) Certificates and agreements will remain valid:

- (1) For one (1) year from the date they were issued; or
- (2) Until cancelled by the division or voluntarily relinquished by the third-party tester or examiner.

Authority. Arkansas Code § 27-23-108.

27 CAR § 51-109. On-site inspections and audits.

(a) Each applicant for a third-party tester certificate shall permit the Division of Arkansas State Police and/or the Federal Motor Carrier Safety Administration 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 Federal Motor Carrier Safety Administration to inspect its third-party testing program to determine whether it remains in compliance with all legal requirements.

(c) The division and/or the Federal Motor Carrier Safety Administration 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 the 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:
 - (A) Testing a sample of drivers who have passed the skills tests administered by the third-party tester; or
 - (B) Having division employees or designees take the skills tests from a third-party examiner employed by the third-party tester; and

(7) Any other aspect of the third-party tester's operation that the division determines is necessary to verify the third-party tester meets all applicable requirements.

Authority. Arkansas Code § 27-23-108.

27 CAR § 51-110. Professional conduct.

(a) An examiner, employee, or agent of the third-party tester may not assist any CDL applicant for the purpose of:

- (1) Completing a license application; or
- (2) 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 Division of Arkansas State Police for the purpose of enrolling that individual in any third-party testing program.

Authority. Arkansas Code § 27-23-108.

27 CAR § 51-111. Advertising.

(a) No advertising shall:

(1) Indicate in any way that the third-party tester can issue or guarantee the issuance of a CDL;

(2) Imply that the third-party tester can in any way influence the Division of Arkansas State Police in the issuance of a CDL; or

(3) 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:

(1) Indicate that the tester is approved, sanctioned, or in any way endorsed by the division; and

(2) Use any other name besides the name on its application for certification, nor shall the tester use "state" in any part of its name.

Authority. Arkansas Code § 27-23-108.

27 CAR § 51-112. Insurance requirements.

(a)(1) 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.

(2) Insurance coverage must be in at least such amounts as required by any applicable state and federal law.

(b) Each third-party tester must maintain insurance coverage which does not exclude from coverage any person:

(1) While taking the skills tests administered by the third-party tester;

(2) Suffering bodily injury or sustaining property damage as a result of skills tests administered by the third-party tester; or

(3) 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 Division of Arkansas State Police either:

(1) A certificate of insurance issued by an insurance company or surety company authorized to do business in Arkansas; or

(2) A certificate of self-insurance issued by the Office 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.

(e) The third-party tester must not use motor vehicles to administer skills tests unless the owner or registrant of the vehicle produces a:

(1) Certificate of insurance for the vehicle issued by an insurance company or surety company authorized to do business in Arkansas; or

(2) Certificate of self-insurance issued by the Office of Driver Services.

(f) The division reserves the right to cancel the agreement with the third-party tester upon determining the third-party tester has failed to:

- (1) File a certificate of insurance or self-insurance; or
- (2) 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.

Authority. Arkansas Code § 27-23-108.

27 CAR § 51-113. Notification requirements.

(a) The third-party tester must:

(1) Notify the Division of Arkansas State Police in writing within thirty (30) days prior to any change in the tester's name or address; and

(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;

(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's license of any third-party examiner in the tester's employ; or

(D) The tester ceases business operations in Arkansas.

(b) The third-party examiners must notify the division and his or her third-party tester as follows:

(1) Before the end of the next business day after the examiner receives notice of any:

(A) Suspension, revocation, cancellation, or disqualification of his or her driver's license; or

(B) Driver improvement action ordered by a court or the Office of Driver Services; and

(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).

Authority. Arkansas Code § 27-23-108.

27 CAR § 51-114. 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 of Arkansas State Police.

(b) CDL skills tests shall be conducted:

(1)(A) 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.

(B) The vehicle shall not contain explosives or other hazardous material.

(C) 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 division-approved content, forms, and scoring procedures; and

(3) On Arkansas roads and highways.

Authority. Arkansas Code § 27-23-108.

27 CAR § 51-115. Denial/termination of third-party testing program.

(a)(1) The Division of Arkansas State Police 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.

(2) 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) days' 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;

(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; or

(4) Continues to employ a third-party examiner:

(A) Who does not have a valid Arkansas CDL;

(B) Whose Arkansas CDL has been suspended or revoked;

(C) Whose examiner certificate has been cancelled; or

(D) Whose application for an Arkansas CDL has been denied.

(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:

(1) Postpone cancellation; and

(2) Allow the third-party tester thirty (30) days to correct the deficiency.

Authority. Arkansas Code § 27-23-108.

27 CAR § 51-116. Third-party testing fee schedule.

The third-party testing fee schedule is as follows:

- (1) Third-party tester application fee, one hundred dollars (\$100);
- (2) Third-party tester renewal fee, one hundred dollars (\$100);
- (3) Third-party examiner application fee (includes training):
 - (A) Forty-hour course (required for new examiners), five hundred dollars (\$500); and
 - (B) Eight-hour course (required for previously trained examiners), one hundred dollars (\$100); and
- (4) Third-party examiner renewal fee, fifty dollars (\$50.00).

Authority. Arkansas Code § 27-23-108.