

JUSTICE AND PUBLIC SAFETY CABINET
Department of State Police
(Amendment)

502 KAR 10:110. Third-party CDL skills test examiner standards.

RELATES TO: KRS 281A.160(4), 49 C.F.R. 383.75, 49 C.F.R. 383.131

STATUTORY AUTHORITY: KRS 281A.160(5), (8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281A.160(5) and (8) require the Kentucky State Police to promulgate administrative regulations for third-party CDL skills test examiners. This administrative regulation establishes the minimum qualifications, mandatory training requirements, and prohibited conflicts of interest for third-party CDL skills test examiners.

Section 1. Definitions. (1) "AAMVA" means the American Association of Motor Vehicle Administrators.

(2) "CDL" means a commercial driver license.

(3) "DOE" means the Kentucky Department of Education.

(4) "Family member" means the current and, if any, former spouse of a third-party skills test examiner, or a person within the third degree of relationship to any of them, or the spouse of that person.

(5) "FMCSA" means the Federal Motor Carrier Safety Administration.

(6) "KSP" means the Kentucky State Police.

(7) "MOA" means memorandum of agreement.

(8) "Third-party CDL skills test examiner" means an employee of the DOE or a local board of education who, pursuant to a MOA entered into between KSP and their employer, administers CDL skills tests to other DOE or local board of education employees seeking a CDL to operate publicly-owned school buses, and persons retained by KSP under contractual agreement to administer CDL skills test to CDL applicants.

Section 2. Third-Party CDL Skills Test Examiner Minimum Qualifications. DOE employees or persons seeking to enter a contractual agreement with KSP to act as a third-party CDL skills test examiner shall satisfy the following minimum qualifications for initial appointment and retention:

(1) Shall not have accrued more than six (6) demerit points on their driving record;

(2) Shall possess a high school diploma or GED;

(3) Shall, if a DOE employee, possess a Class A or B CDL with passenger and school bus endorsements;

(4) Shall, if a third-party contract examiner, possess:

(a) A Class A CDL with all available endorsements; and

(b) Previous experience as a CDL skills test examiner or two (2) years' experience within the past five (5) years as a licensed Class A or B CDL operator in good standing;

(5) Shall maintain their CDL license with all endorsements required by subsections (3) and (4) of this section;

(6) Shall pass one (1) complete battery of forms A, B, or C of the CDL knowledge tests administered by KSP. These tests shall be retaken every four (4) years;

(7) Shall pass the CDL skills test administered by KSP in the type of commercial vehicle in which they will test CDL applicants. This CDL skills test shall be retaken every four (4) years at the direction of KSP; and

(8) Shall give written consent to KSP to conduct a Kentucky criminal history records check, and further give written consent to an updated Kentucky criminal history records check being performed every four (4) years. Persons who are determined to have felony or misdemeanor convictions involving violence, dishonesty, or moral turpitude may be rejected for appointment, or have their appointment as a third-party CDL skills test examiner revoked, based upon a case-by-case discretionary consideration of the facts and circumstances surrounding the conviction.

Section 3. Third-Party CDL Skills Test Examiner Mandatory Training Requirements. (1)(a) Except as provided in paragraph (b) of this subsection, persons appointed as a third-party CDL skills test examiner shall successfully complete the initial forty (40) hours of CDL skills test examiner training conducted by KSP and pass all exams associated with the training. This training shall be approved by AAMVA and FMCSA. Certificates of completion shall be issued by KSP upon successful completion of this training;

(b) Persons who have previously administered CDL skills tests for KSP and who have completed this training within the past two (2) years shall be waived from this training requirement.

(2) Third-party skills test examiners shall attend and successfully complete an annual ten (10) hour in-service training conducted by KSP.

(3) Third-party skills test examiners shall participate in the certification process for CDL examiners administered through AAMVA. This certification shall be sought and maintained through KSP. It shall be the responsibility of the third-party skills test examiner to pay all fees charged by AAMVA to obtain and maintain this certification. Failure to obtain this certification within two (2) years from the date of appointment as a third-party CDL skills test examiner shall be grounds for revocation of appointment.

(4) Third-party CDL skills test examiners shall be issued identification cards and a unique examiner identification number that identifies them as a CDL examiner. The identification card shall be carried and produced upon request of KSP. The examiner identification number shall be recorded by the third-party CDL skills test examiner on all CDL examination reports and related documents required by KSP to be completed by the examiner in the course of their duties.

(5) Third-party CDL skills test examiners shall conduct CDL skills tests in a uniform approved by KSP. KSP shall not be responsible for the purchase or maintenance costs for this uniform.

Section 4. Additional CDL Skills Test Requirements. (1) Third-party skills tests examiners shall comply with 49 C.F.R. 383.75, Subparts G and H.

(2) Third-party CDL skills test examiners shall, without deviation, administer the CDL skills test in accordance with the AAMVA's 2005 CDL Test System Model CDL Examiner's Manual (July 2010 version or newer) [~~KSP Driver Testing Branch CDL Examiners Manual~~].

(3) Third-party CDL skills test examiners shall record the CDL applicant's skills test scores.

(4) Third-party CDL skills test examiners shall be required to keep and maintain files pertaining to CDL tests that they have administered for a period of two (2) years. These records shall be subject to inspection by KSP or any other state or federal entity performing an audit of these records.

(5) Third-party skills test examiners shall be subject annually to at least one (1) check ride every two (2) years [~~two (2)~~] check rides performed by an official observer who, at the direction of KSP, shall ride with the examiner and observe the CDL skills test as it is given to ensure the examiner is administering the test in full compliance with all federal and state laws and administrative regulations.

(6) Third-party CDL skills test examiners shall be subject to "select tests" conducted by KSP. These tests shall consist of the CDL applicant being retested not later than two (2) days following the original test administered by the third-party CDL skills test examiner, utilizing commercial vehicle equipment provided by or on the behalf of the CDL skills test applicant at no cost to KSP. The retest results shall then be compared to verify that there are no deficiencies with the original test given by the third-party CDL skills test examiner. If the two (2) test scores differ, making a difference as to whether the CDL applicant passed or failed, the score given by KSP on its retest shall be entered into the official record as the actual score of the CDL applicant.

(7) Third-party CDL skills test examiners shall be subject to random inspection testing by KSP or FMCSA. These tests may consist of the third-party CDL skills test examiner administering a CDL skills test to a CDL applicant who is an agent of KSP or FMCSA without the examiner's knowledge of the individual's true identity.

(8) Third-party CDL examiners shall be subject to monitoring of their testing processes by KSP or FMCSA to ensure compliance with all federal and state laws and administrative regulations.

Section 5. Prohibited Conflicts of Interest. (1) A third-party CDL skills test examiner shall not administer a CDL skills test to a CDL applicant who is a family member or who has received commercial truck driving instruction training at a commercial truck driving school that is owned or operated by a family member.

(2) A third-party CDL skills test examiner shall not administer a CDL skills test to a CDL applicant with whom the examiner is involved in a dating, romantic, or other type of intimate personal relationship, regardless of whether the examiner and applicant share a residence.

(3)(a) Except as provided in paragraph (b) of this subsection, a third-party CDL skills test examiner who administers CDL skills tests under a contractual agreement with KSP and who is a present or former commercial truck driving school employee, shall not administer thirdparty CDL skills test exams to any CDL applicant who has attended a commercial truck driving school as a student of the examiner's present or former employer;

(b) Once a third-party CDL skills test examiner has ceased employment with a commercial truck driving school for at least one (1) year, the examiner may be authorized to administer CDL skills test exams to CDL applicants who are commercial truck driving students of their former employer, if KSP, in its sole discretion, determines that the examiner can administer the exam in a fair, unbiased, and legal manner as prescribed by the FMCSA, 49 C.F.R. Parts 383 and 384.

Section 6. Revocation of Appointment. Failure to comply with the requirements of this administrative regulation shall be grounds for revocation of appointment as a third-party CDL skills test examiner by KSP and shall further constitute good cause for termination of KSP's contractual obligations with examiners who administer CDL skills test pursuant to contract.

Section 7. Third-Party CDL Skills Test Examiner Records. All records pertaining to selection and appointment of third-party CDL skills test examiners shall be maintained by KSP. These records shall be reviewed prior to renewing CDL third-party CDL skills test examiner appointment, whether by Memorandum of Agreement with DOE or contractual agreement with other third-party CDL skills test examiners. Third-party CDL skills test examiner records shall contain the following information:

- (1) Copy of qualification questionnaire containing photo of individual;
- (2) Copy of DOE Memorandum of Agreement (if applicable);

- (3) Copy of criminal history and driving record;
- (4) All other documents related to the qualification and requirements of the examiner; and
- (5) Any investigations, select testing and covert testing, or monitoring conducted by KSP concerning the third-party CDL skills test examiner.[]

~~Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "KSP Driver Testing Branch CDL Examiners Manual", Version 2.0. The manual is produced by AAMVA; and~~

~~(b) CDL Skills Test Reporting Form, July 2001.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Custodian of Records, Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 8:00 a.m. on November 22, 2021 at 4449 Kit Carson Drive, Funderburk Building, Richmond, Kentucky 40475. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on November 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Amy Barker, Assistant General Counsel, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email amy.barker@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum qualifications, mandatory training requirements, and prohibited conflicts of interest for third-party CDL skills test examiners.

(b) The necessity of this administrative regulation: This regulation is necessary in order to carry out the provisions of KRS 281A.160 and the applicable federal statutes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the authorizing statute by providing guidance to the promulgated regulations implementing KRS 281A.160 and the applicable federal statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation assists in the administration of the statutes by clarifying the statutory authority and the qualifications for third-party CDL skills test examiners.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment accurately reflects the statutory authority and clarifies the standards for third-party CDL skills test examiners.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statute by providing guidance to the promulgated regulations implementing KRS 281A.160 and the applicable federal statutes.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies the statutory authority and the procedures utilized by the department.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Kentucky State Police; driver training schools; driver training school instructors; driver training school facilities; third-party CDL skills test examiners.

(4) Provide an analysis of how the entities identified in the previous question will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: No new or additional actions will have to be taken by the regulated entities in order to effectively comply with this amended regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Nothing.

(c) As a result of compliance, what benefits will accrue to the entities: They will benefit from having the correct statutory authority cited.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, this regulation does not establish any new fees; nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Kentucky State Police; driver training schools; driver training school instructors; driver training school facilities; third-party CDL skills test examiners.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 281A.160 and the applicable federal statutes.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school dis-

tricts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? Nothing.

(d) How much will it cost to administer this program for subsequent years? Nothing.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None.

Expenditures (+/-): None.

Other Explanation: None.