

CR 90-146

CERTIFICATE

STATE OF WISCONSIN)
) ss.
DEPARTMENT OF TRANSPORTATION)

TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, RONALD R. FIEDLER, Secretary of the Wisconsin Department of Transportation and custodian of the official records, do hereby certify that the rule, relating to **Third Party Testing**, was duly approved and adopted by this Department on **November 12, 1990**.

I further certify that this copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department of Transportation at 4802 Sheboygan Avenue, in the City of Madison, Wisconsin, this **12th** day of November, 1990.

for *Ronald R. Fiedler, Deputy*
RONALD R. FIEDLER, P.E.
Secretary

RECEIVED

NOV 12 1990
11:05 AM
Revisor of Statutes
Bureau

IN THE MATTER OF a rule to create chapter Trans 115, of the Wisconsin Administrative Code, relating to Third-Party Testing.

ORDER ADOPTING RULE

RECEIVED

Analysis Prepared by the Wisconsin Department of Transportation

NOV 12 1990

STATUTORY AUTHORITY: ss. 85.16(1) and 343.02, Stats.

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STATUTES INTERPRETED: s. 343.16(1)(b), Stats.

General Summary of Rule. The rule relates to the requirements for a person conducting a driving skills test for applicants for a commercial driver license (CDL). These persons are termed third party testers and examiners. The rule defines third party tester as the business or entity that maintains a place of business and is responsible for keeping the testing records. The third party examiner is the person who actually conducts the CDL skills test.

The rule prohibits third party testers from employing an employee of the department of transportation (DOT).

Third party testers must maintain a primary place of business in Wisconsin that is safe and complies with local ordinances. The maximum fee for services charged by the third party tester is set in the agreement between the tester and the DOT. The third party tester is required to maintain records containing information on persons tested, test results, and the examiner who conducted the test. The rule provides that the third party tester will be audited by the DOT and the Federal Highway Administration. When the applicant successfully completes the CDL skills test, the third party examiner provides a CDL skills test certification to the applicant. The applicant must present the CDL skills test certification at the local division of motor vehicles customer service center when applying for a CDL. If the applicant fails the test, the division of motor vehicles is notified by mail. Employees and non-employees of the third party tester may be given the CDL skills test. A third party tester and a third party examiner must each conduct a minimum of 25 CDL skills tests per year to be in the program. Each third party tester must have at least one examiner.

A third party examiner may work for more than one third party tester. The rule requires the third party examiner to hold a CDL authorizing him or her to operate the commercial motor vehicle (CMV) used for testing CDL applicants. The examiner must have 2 years of licensed experience operating the class of CMV used for testing. A training program approved by DOT must be completed and paid for by each third party examiner. Third party examiners must maintain an exemplary driving record and meet physical standards as defined in the rule.

When a third party meets the requirements of the rule, the tester will be granted authority and the examiner will be issued a certificate by DOT. Grants of authority and certificates must be renewed annually. The tester will pay a fee of \$100 and execute an agreement with DOT to conduct tests in accordance with this rule. A third party tester must agree to hold the DOT harmless from liability resulting from the third party testing program. The examiner will pay an annual fee of \$25.

The rule prohibits third parties from false or misleading statements to CDL applicants.

A third party tester must maintain commercial general liability, business auto, and workers' compensation and employers liability insurance.

A driving skills test conducted for a CDL applicant must be in conformance with the CDL skills test standards established by DOT.

The rule provides that a third party testing authority or examiner's certificate may be denied or canceled for cause and a hearing process is established. DOT reserves the right to cancel the entire third party testing program.

Regulatory Flexibility Analysis. This rule has no significant impact on small business.

Fiscal Impact. 1989 Wis. Act 105 provides that the department may authorize third parties to conduct CDL skills tests. This rule implements that provision of the act. Assumptions associated with implementation are as follows:

It is assumed that 200,000 commercial drivers will need a commercial drivers license (CDL) by April 1, 1992. Approximately 80% of the current commercial drivers will be "grandfathered" (exempt from the CDL skills test on the basis of experience and driving record). Therefore, 20% of the 200,000 will take a CDL skills test or 40,000.

Based on a survey of potential third party testers (motor carriers, bus companies, schools and local governments) it is assumed that 10% of the CDL skills tests will be administered through third party testers. Survey results reveal that approximately 75 organizations will qualify as third party testers. It is assumed that there will be 100 third party examiners (the persons who actually go out in the vehicle and administer the test).

The division of motor vehicles will audit third party testers at least annually. Additionally, an initial review of the third party premises and test route is necessary. Records and files of third party tester applications and agreements and related correspondence will be maintained in the DMV central office.

A one time data processing cost associated with programming necessary for identifying third party testers and examiners on computer is part of an estimated \$200,000 required for implementation of Act 105. Therefore, the data processing cost required for this rule will be absorbed.

COSTS

One FTE at the MVPS4 level will be utilized in the DMV central office to administer the third party testing program and conduct the audits.

1 MVPS including fringe benefit	\$38,507
Staff support cost	<u>1,980</u>
ANNUAL COST TOTAL	\$40,487
One time cost (office, telephone, computer)	\$ 6,620

REVENUE

75 Third party testers @ \$100	\$ 7,500
100 Third party examiners @ \$25/certificate	<u>2,500</u>
TOTAL REVENUE	\$10,000

Contact Person. The person to contact for further information is Michael Cradler (608) 266-8684.

TEXT OF RULE

Under the authority vested in the Wisconsin department of transportation by ss. 85.16 (1) and 343.02, Stats., the department of transportation hereby creates chapter Trans 115, Wis. Admin. Code, implementing s. 343.16, Stats., as follows:

SECTION 1. Chapter Trans 115 is created to read:

CHAPTER TRANS 115

THIRD PARTY TESTING

Trans 115.01 PURPOSE. As authorized by s. 343.02, Stats., the purpose of this chapter is to establish policies and procedures to authorize persons, other than employees of the department to conduct the commercial driver license skills tests required of commercial driver license applicants. Authority to administer CDL skills tests will be granted only to third party testers under agreement with the department and utilizing third party examiners recognized and deemed qualified by the department.

NOTE: Forms used in this chapter are MV3442 pre-trip score sheet, MV3543 road test score sheet for A, B, & C class licenses, MV3547 application-CDL tester-organization, MV3548 application-CDL examiner, MV3549 agreement-CDL tester, MV3550 authority-CDL tester, MV3551 CDL test annual log, MV3552 record-CDL operator test, MV3553 certification-CDL skills test, MV3554 record-CDL tester audit and MV3557 third party examiner certificate. A sample copy of these forms may be obtained, free of charge, from the Wisconsin department of transportation, bureau of driver services, P.O. Box 7917, Madison, WI 53707-7917.

Trans 115.02 DEFINITIONS. The words and phrases defined in ss. 340.01 and 343.01, Stats., have the same meaning in this chapter unless a different definition is specifically provided. In addition, in this chapter:

(1) "Authority" means the document issued to a third party tester allowing the holder to administer the authorized testing program on behalf of the department.

(2) "Authorized testing program" means the CDL skills tests required by the department which shall be administered by a third party tester.

(3) "CDL" means commercial driver license.

(4) "CDL skills test" means the test of a person's ability to drive a commercial motor vehicle by performing the pre-trip, basic control and road test maneuvers required by ch. Trans 104.

(5) "CMV" means commercial motor vehicle.

(6) "Department sanctioned CDL examiner training course" means a course conducted by the department or a school of the Wisconsin vocational, technical and adult education system authorized by the department, to prepare a person to conduct the CDL skills test.

(7) "Examiner identification certificate" means a certificate issued to a person who has been authorized by the department as a qualified third party examiner to conduct the CDL skills test.

(8) "FHWA" means the federal highway administration or its representatives.

(9) "FMCSR" means the federal motor carrier safety regulations promulgated by the U.S. department of transportation.

(10) "Primary place of business" means the central operating location of the third party tester in the state of Wisconsin.

(11) "Third party examiner" means a person who is employed by a third party tester and who holds a valid examiner identification certificate issued by the department.

(12) "Third party tester" means a person, including, but not limited to, an agency or department of this state or its political subdivisions or another state, or a private employer authorized by the department to administer the authorized testing program for CDL applicants in accordance with this chapter.

NOTE: Private driver training schools are prohibited from becoming third party testers by s. 343.16(1)(b), Stats.

Trans 115.03 EMPLOYMENT OF DEPARTMENT EMPLOYEES. No third party tester granted authority under the provisions of this chapter may engage the service of an employee of the department as an examiner, agent or employee.

Trans 115.04 REQUIREMENTS FOR THIRD PARTY TESTERS. (1) To be granted third party tester authority, a party shall:

(a) Make application to and enter into an agreement with the department. The application shall be made on a form supplied by the department and include all of the following:

1. Certification that the applicant maintains a primary place of business with at least one permanent regularly occupied structure.

2. Certification that the primary place of business is safe and meets all requirements of state law and local ordinances.

3. The official name, address and telephone number of the primary place of business.

4. Certification that the applicant employs a safety officer or official who is responsible for the organization's third party testing operation.

5. The name, title, address and telephone number of the safety officer or other official who has been designated as a contact person with the department.

6. Certification that the applicant employs at least one third party examiner.

7. If the applicant is subject to FMCSR, a certification that applicant maintains a FHWA safety rating of "satisfactory."

8. The type of organization applicant represents including, but not limited to, governmental entity, association, motor carrier, educational institution.

9. If applicable, a description of the vehicle fleet owned or leased by the applicant, including the number of CMVs by class and type.

10. The class of testing and endorsements for which the applicant is applying.

11. If applicable, the total number of Wisconsin licensed drivers employed to operate CMVs.

12. A designated skills test route or routes acceptable to the department which shall include all of the following:

a. The address of each Wisconsin location where the applicant intends to conduct the CDL skills tests.

b. A description of the off-road facilities as well as a map, drawing or written description of each test route that will be used for the on-road portion of the CDL skills test.

13. A \$100 application fee.

(2) The department will evaluate the materials submitted by the third party tester applicant, and if the application materials are satisfactory, the department shall schedule an on-site inspection and audit of the applicant's third party testing program.

(3) As a condition of any grant of authority, an approved third party tester shall:

(a) Continue to satisfy all the terms and conditions required in the application process.

(b) Not exceed the fee set by the department for applicants taking a CDL skills test or the prorated fee for any portion of the test.

(c) Allow FHWA and the department to conduct scheduled and unscheduled examinations, inspections and audits.

(d) Maintain at the primary place of business an alphabetical driver file listing each CDL skills test conducted, whether the driver passes or fails the test. Each record shall be maintained for a minimum of five years and include all of the following:

1. The driver's complete name, social security number, address, phone number and employer.

2. The driver's current license number, license class, license endorsements, license restrictions, expiration date and issuing jurisdiction.

3. The dates the driver took the CDL skills tests.

4. The CDL classification, endorsements and restrictions applied for by the CDL applicant.

5. The test score sheets showing the results of the CDL skills tests.

6. The name and certificate number of the third party examiner conducting the CDL skills test.

7. Copies of receipts for fees collected from CDL applicants.

8. The make, model and registration number of the CMVs used during the testing.

9. A copy of the written agreement, if applicable, with any person being tested.

(e) Maintain at the primary place of business an annual log of CDL skills tests conducted, whether the driver passes or fails the test. Each record shall be maintained for a minimum of five years and include all of the following:

1. The date of the skills test.
2. The drivers name.
3. The CDL classification, endorsements and restrictions applied for by the CDL applicant.
4. The name and certificate number of the third party examiner conducting the CDL skills test.
5. The results of the CDL skills test.

(f) Maintain a record, at the primary place of business, for each third party examiner in the employ of the third party tester. Each record shall be maintained for a minimum of 5 years and include all of the following:

1. A copy of a valid certificate.
2. A copy of the third party examiner's current driving record, which must be updated annually.
3. Evidence that the third party examiner is an employee of the third party tester.

(g) Ensure that the CDL skills tests are conducted in accordance with the requirements of chapter Trans 104 and the instructions provided by the department.

(h) Provide proof of successful test completion, on a form provided by the department, to each driver applicant who passes the required CDL skills test. This CDL skills test certification form shall provide a record of all tests or portions of tests passed or failed. The driver applicant shall present this form to the department as a condition of obtaining a CDL.

(i) Notify the department of each driver applicant who fails the basic controls and road test portion of the CDL skills test in the following manner:

1. By first class mail.
2. Within 72 hours.
3. On a CDL skills test score sheet form provided by the department.

(j) Ensure that vehicles used for CDL skills tests are properly registered and meet minimum safety requirements of federal and state law.

(k) Administer a minimum of 25 CDL skills tests per year.

(l) Request and obtain authorization from the department for any proposed changes in the CDL skills test route, test content, or test procedures.

(m) Notify the department in writing of any of the following:

1. Any change of third party tester name or address 30 days prior to the change.
2. Discontinuation of business in Wisconsin as a third party tester.
3. Any third party examiner who fails to comply with any of the department's CDL skills test requirements.

Trans 115.05 REQUIREMENTS FOR THIRD PARTY EXAMINERS. (1) To be granted an examiner identification certificate, a third party examiner shall:

(a) Make application to the department.

(b) Possess a valid Wisconsin CDL with classification and endorsements necessary for operation of the class and type of CMV used in the CDL skills tests conducted by the examiner. In lieu of the CDL requirement, a person may possess a valid Wisconsin chauffeur or school bus license as required by s. 343.01(2)(a), Stats., until 60 days after the department begins issuing CDLs.

(c) Have 2 years licensed experience operating the class of CMV used in the CDL skills test conducted by the examiner.

(d) Have successfully passed and paid all fees for a department sanctioned CDL examiner training course.

(e) Within four years prior to application have had no convictions for operating any motor vehicle while intoxicated.

(f) Within four years prior to application have had no operator's license suspensions, revocations, cancellations or disqualifications for a traffic offense other than parking violations.

(g) Within four years prior to application and subject to ss. 111.321, 111.322 and 111.335, Stats., have had no felony convictions.

(h) Meet all of the following physical standards:

1. Have no impairment of a hand, arm, foot, or leg which interferes with the ability to perform normal tasks associated with operating a CMV or any other significant limb defect or limitation which interferes with the ability to perform normal tasks associated with operating a CMV.

2. Vision - acuity of 20/40 in either eye and at least 20/100 in the other eye with or without corrective lenses and a horizontal, temporal field of vision of 70 degrees or more from the center in each eye and ability to recognize the colors of traffic signals.

3. Hearing - The applicant shall hear normal spoken voice with or without corrective help.

(2) Application for an examiner's identification certificate shall be made on a form supplied by the department including the following:

(a) Full name, home and business addresses, date of birth, social security number, operator's license number, and telephone number.

(b) Driving history, including class of current license and any endorsements, and restrictions.

(c) Name, address and telephone number of the applicant's employers who applied for or received authority as a third party tester.

(d) Employer's recommendation of the applicant for an examiner's identification certificate.

(e) Date and place applicant successfully passed department sanctioned CDL examiner training course. An original application shall be accompanied by written proof verifying passage of the course.

(f) The class of testing and endorsements for which the applicant is applying.

(g) A \$25.00 application fee.

(3) The department may require a report of medical examination, completed within the past 90 days, to determine the applicant's ability to perform normal tasks associated with operating a commercial motor vehicle. The cost of obtaining the required medical information is the responsibility of the third party examiner.

(4) The department will evaluate the materials submitted by each third party examiner applicant including the applicant's driving record and may test him or her for knowledge and skill.

(5) As a condition of a grant of an examiner's identification certificate, a third party examiner shall:

(a) Continue to satisfy all the terms and conditions in subs. (1) and (2).

(b) Take part in all department required training courses, workshops, and seminars. A person who has not had a valid certificate in the past 4 years shall retake department sanctioned CDL training.

(c) Conduct a minimum of 25 CDL skills test per year in accordance with this chapter and current instructions provided by the department.

(d) Notify the department in writing within 10 days of any of the following:

1. Any change of employment with third party testers.
2. Any change in class of commercial drivers license testing authorization.

Trans 115.06 AUTHORITY AND CERTIFICATES. GENERAL REQUIREMENTS.

(1) An authorization document shall be issued to each qualified third party tester.

(2) An examiner's identification certificate shall be issued to each qualified examiner of the third party tester.

(3) A copy of the examiner's identification certificate shall be displayed in the primary place of business of the third party tester.

(4) The authorization document issued by the department to a third party testing program shall be displayed in the primary place of business of the third party tester.

(5) A third party tester authorization or examiner identification certificate shall be non-transferable.

(6) Each authorization document or examiner identification certificate shall be effective on the date of issuance and shall expire at the end of the calendar year, except that it shall expire at the end of the next calendar year if issued after June 30.

(7) All renewal application forms shall be submitted to the department not less than thirty days prior to the time the previous authorization or examiner's identification certificate expires.

Note: The department will not be responsible for the timely issuance of any renewal authorization document or examiner's identification certificate when the application is not received in the required time frame.

Trans 115.07 ON-SITE INSPECTIONS AND AUDITS. (1) A new applicant for third party tester authority shall allow the FHWA and the department 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 granted authority.

(2) A third party tester who has been granted authority shall allow the department and FHWA to inspect and audit its third party testing program to determine whether it remains in compliance with this chapter.

(3) The department and FHWA may perform inspections and audits at any time with or without prior notice to the third party tester.

(4) Inspections and audits shall be conducted at least annually and shall include an examination of all of the following:

(a) Records relating to the third party testing program.

(b) Evidence of compliance with the FMCSR, Wisconsin statutes and this chapter.

(c) Skills testing procedures, practices and requirements.

(d) Vehicles used for testing.

(e) Qualifications of third party examiners.

(f) Effectiveness of the CDL skills test program which shall be determined by any of the following means:

1. Having department employees take the CDL skills tests actually administered by the third party examiner.

2. Retesting a sample of drivers who were examined by the third party.

(g) Any other aspect of the third party tester's operation that the department determines is necessary to verify that the third party tester meets the requirements of this chapter.

(5) The department shall prepare a written report of the results of each inspection and audit. A copy of the report shall be provided to the third party tester.

Trans 115.08 PROFESSIONAL CONDUCT AND ADVERTISING. (1) Third party examiners shall conduct themselves in a professional manner and display good driving behavior.

(2) A third party tester may advertise that the tester is authorized by the department of transportation to conduct CDL skills tests but may not indicate that a program is approved, sanctioned, or in any other way endorsed by the department over another program.

(3) No third party examiner or tester or employee or agent of a third party tester shall:

(a) Publish, advertise or imply any of the following:

1. That a program can issue or guarantee the issuance of a CDL.
2. That the tester can influence the department's decision to issue a CDL.
3. That preferential or advantageous treatment from the department can be obtained.

(b) Provide CDL applicants with exact copies of testing material used by the department to conduct CDL examinations.

(c) Accept bribes or offer anything of value to influence the CDL examination, or issuance of a CDL completion form or license.

(d) Solicit any individual on a premise rented, leased, or owned by the department for the purpose of enrolling that individual in any third party testing program.

Trans 115.09 MINIMUM INSURANCE REQUIREMENTS. (1) All third party testers shall maintain commercial insurance coverages and limits as follows:

<u>Coverage</u>	<u>Limits</u>
Comprehensive general liability	\$1,000,000 combined single limits per occurrence.
Business auto policy	\$1,000,000 combined single limits - coverage shall apply to owned and non-owned vehicles used in the CDL skills test.
Workers' compensation and employers liability	Workers' compensation - statutory employers liability - \$500,000

(2) As evidence of required insurance coverage, the third party tester shall file with the department one of the following:

(a) A certificate of insurance issued by an insurance company licensed to do business in this state.

(b) A certificate of self insurance issued by a group motor vehicle self insurance pool, stating that there is in effect a contract of insurance providing the coverage required to participate in this program, which certificate shall stipulate that the insurance shall not be canceled except upon 30 days prior written notice to the department.

(c) A certificate of self insurance indicating a net worth in excess of \$20,000,000 issued by the department.

(3) A certificate of insurance or self insurance shall include a make, model, year and identification number of every vehicle which will be used by the third party tester to administer CDL skills tests.

Trans 115.10 TEST ADMINISTRATION. (1) Skills tests shall be conducted strictly in accordance with the provisions of ch. Trans 104 and with current test instructions provided by the department. Such instructions may include information on CDL skills test content, route selection, test forms, examiner procedures, and administrative procedures.

(2) Skills tests shall be conducted:

(a) On test routes authorized by the department.

(b) In a CMV that is representative of the class and endorsement for which the CDL applicant seeks to be licensed and for which the third party examiner is qualified to test.

(c) Using department authorized content, forms and scoring procedures.

Trans 115.11 DENIAL AND CANCELLATION OF THIRD PARTY TESTING.

(1) The department may cancel, deny or refuse to renew a third party tester authorization or an examiner's identification certificate for any of the following:

(a) The organization or person does not qualify as a third party tester or examiner under the provisions of this chapter.

(b) Failure to comply with or satisfy any of the provisions of a third party tester agreement or any other requirements of this chapter.

(c) Fraud or misrepresentation.

(d) Falsification of any records or information relating to third party tester or examiner program.

(e) Commission of any act which compromises the integrity of the third party tester or examiner program.

(2) The department shall cancel or refuse to renew a certificate when the third party examiner's operator's license is suspended, revoked, or canceled.

(3) If the department determines that grounds for cancellation exist for failure to comply with or satisfy any of the requirements of this chapter or the third party tester contract, the department may postpone the cancellation and allow the third party tester or examiner 30 days to correct the deficiency.

(4) A person whose application has been denied or canceled under this chapter may request that the department conduct a hearing. The request shall be in writing. The department will schedule the hearing no later than 15 days from the receipt of the request unless a later date is agreed to between the department and the person requesting the hearing. A Hearing notice shall be sent to the person's last known address by first class mail.

(5) The results of the hearing conducted by the department for denial or cancellation under this chapter is subject to judicial review in the manner provided in ch. 227, Stats., for the review of administrative decisions.

(6) Any third party tester or examiner shall surrender the authorization or certificate upon demand by the department.

(7) A person whose authorization or certificate has been denied or canceled under this chapter may reapply upon termination of the period of time, if any, set by the department. The department shall require the applicant to provide proof that the conditions that caused the denial or cancellation have been corrected or are no longer applicable.

Trans 115.12 PROGRAM CANCELLATION. The department reserves the right to cancel the third party testing program.

(END OF RULE TEXT)

Effective Date: This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

Signed at Madison, Wisconsin this 12th day
of November, 1990.

for Donald H. Janssen, Deputy
Ronald R. Fiedler, P.E.
Secretary
Wisconsin Department of Transportation

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Wisconsin Department of Transportation

Tommy G. Thompson
Governor

Ronald R. Fiedler, PE
Secretary

OFFICE OF GENERAL COUNSEL
P. O. Box 7910
Madison, WI 53707-7910

November 12, 1990

Mr. Gary Poulson
Assistant Revisor of Statutes
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Madison, Wisconsin 53703

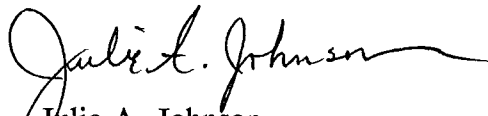
RE: **CLEARINGHOUSE RULE 90-146**

In the Matter of the Adoption of **TRANS 115**, Wisconsin Administrative Code, relating to **Third Party Testing**.

Dear Mr. Poulson:

Enclosed for filing, pursuant to s. 227.20, Wis. Stats., is a certified copy of **CR 90-146**, an administrative rule relating to the above-mentioned matter. This rule is submitted by the Wisconsin Department of Transportation.

Sincerely,


Julie A. Johnson
Paralegal

Enclosures

cc: Tom Walker
Linda Thelke
Sandy Beaupre
Joyce Gelderman
Wes Geringer

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