

HAWAII ADMINISTRATIVE RULES
 TITLE 19
 DEPARTMENT OF TRANSPORTATION
 SUBTITLE 5
 MOTOR VEHICLE SAFETY OFFICE
 CHAPTER 137
 CATEGORY 4 AND COMMERCIAL DRIVER
 THIRD PARTY EXAMINER REQUIREMENTS

| | |
|------------|--|
| §19-137-1 | Purpose |
| §19-137-2 | Definitions |
| §19-137-3 | General provisions |
| §19-137-4 | Application requirements for third party examiners |
| §19-137-5 | Duties and responsibilities of third party examiners |
| §19-137-6 | Fees |
| §19-137-7 | Examiner certificate |
| §19-137-8 | Training of third party examiners |
| §19-137-9 | Display of certification |
| §19-137-10 | On-site inspections and audits |
| §19-137-11 | Professional conduct |
| §19-137-12 | Advertising |
| §19-137-13 | Notification requirements |
| §19-137-14 | Test administration |
| §19-137-15 | Denial/termination of third party testing authority |

Historical note. This chapter is based upon The Rules and Regulations Governing the Certification of Fleet Safety Examiners; Examination and Qualification for the Licensing of Drivers of Heavy Trucks, Buses, School Buses, Tractor-Semitrailer Combinations and Truck-Trailer Combinations; and the Certification Requirement for the Approval of Heavy Vehicle Driver Improvement Programs.
 [Eff ; R JUN 15 1991]

§19-137-1 Purpose. This chapter establishes policies and procedures to authorize persons other than employees of the county driver licensing offices to conduct the skill tests required of category 4 and commercial driver's license applicants. Authority to administer skill tests

will be granted only to third party examiners certified by the department and who have entered into a contract with the state. [Eff JUN 15 1991] (Auth: HRS §286-236) (Imp: HRS §286-236)

§19-137-2 Definitions. As used in this chapter, unless a different meaning clearly appears from the context:

"Approved testing program" means the skill tests required by the department and administered by a third party examiner.

"CDL" means commercial driver's license.

"County" means the county agency having the responsibility for administering the driver's licensing program.

"Department" means the state department of transportation.

"Examiner certificate" means the card issued by the department to an individual who has been certified by the department to conduct the skill tests required for both a category 4 license and a CDL.

"FHWA" means Federal Highway Administration.

"FMCSR" means the Federal Motor Carrier Safety Regulations promulgated by the U.S. Department of Transportation.

"Third party examiner" means an individual who has been certified and been issued an examiner certificate by the department to administer the approved testing program for a category 4 license applicant and CDL applicant in accordance with the requirements of this chapter.

[Eff JUN 15 1991] (Auth: HRS §286-246) (Imp: HRS §286-246)

§19-137-3 General provisions. (a) The department shall administer and enforce these rules.

(b) No department or county employee shall be employed by a third party examiner.

(c) All certified third party examiners shall enter into a contract, a copy of which is attached to the rules as Exhibit "A", with the state before administering any skill tests. [Eff JUN 15 1991] (Auth: HRS §286-247) (Imp: HRS §286-247)

§19-137-4 Application requirements for third party examiners. (a) No person shall be certified as a third party examiner unless the applicant satisfies the following qualifications:

- (1) Has filed an application in accordance with section 19-137-5 of this chapter;
- (2) Possesses a valid Hawaii driver's license with the classification and endorsements required for operation of the class and type of motor vehicle used in the skill tests to be performed by the applicant;
- (3) Has successfully completed a department-approved CDL examiner training course by demonstrating proficiency in the following areas:
 - (A) A comprehensive understanding of all information in the CDL driver's manual;
 - (B) A working knowledge of the CDL examiner's manual;
 - (C) Ability to administer and score correctly each of the CDL skill tests; and
 - (D) Knowledge of testing site and route requirements.
- (4) Has no DUI conviction within three years prior to filing the application;
- (5) Has no driver's license suspension, revocation, cancellation or disqualification within three years prior to filing the application;
- (6) Is at least 21 years of age and possesses the equivalent of a high school diploma;

(b) Application for a third party examiner certification shall include an abstract and shall be made on a form supplied by the department which shall require the following information:

- (1) Full name, residence and business address(es) and telephone number(s);
- (2) Driving history, including class of current license and any endorsements, and restrictions;
- (3) The class of testing for which the applicant is applying; and
- (4) The address of each location where the applicant intends to conduct the skill tests. Include a description of the off-road facilities as well as a map or drawing and written description of the test route that will be used for the on-road portion of the skills test. [Eff JUN 15 1991]
(Auth: HRS §286-246) (Imp: HRS §286-246)

§19-137-5 Duties and responsibilities of third party examiners. The duties and responsibilities shall be as follows:

- (1) Take part in all department required advanced training courses, workshops, seminars, etc.;
- (2) Conduct skill tests in accordance with these requirements and in accordance with chapter 19-122, Hawaii Administrative Rules, provided by the department;
- (3) Allow FHWA, its representative, the department, and the county to conduct random examinations, inspections and audits without prior notice;
- (4) Allow the department and the county to conduct annual on-site inspections;
- (5) Maintain records of all skill tests administered for at least two years. Each record shall include:
 - (A) Driver applicant's complete name and address;
 - (B) Driver applicant's social security number and any other driver applicant's license number with the state or jurisdiction that issued the license;
 - (C) Date the driver applicant took the skill tests;
 - (D) Test score sheet(s) showing the results of the skill tests;
 - (E) Record of test receipts and refunds;
 - (F) Vehicle description, GVWR, license plate number(s) of the motor vehicle(s) used to conduct the testing; and
 - (G) Copy of the written contract, if applicable, with any person or group of persons being tested, including amounts charged for the various tests;
- (6) Be in full compliance with all department rules;
- (7) Maintain a copy of the third party examiner's abstract, which must be updated annually; and
- (8) Provide to the driver applicant and county examiner where application for skill tests is made, a "notice of pass", indicating that the driver applicant has passed the skill tests. The "notice of pass" shall be provided by the state. The county shall verify the driver applicant's copy of the notice with its copy and require proof of personal identification from the applicant. [Eff JUN 15 1991] (Auth: HRS §286-246) (Imp: HRS §286-246)

§19-137-6 Fees. The maximum fee charged by a third party examiner for each skill test shall not exceed the fee under section 19-122-21. [Eff JUN 15 1991] (Auth: HRS §286-246) (Imp: HRS §286-246)

§19-137-7 Examiner certificate. A certificate will be issued authorizing the third party examiner to conduct driving skill tests to driver applicants for a category 4 or CDL. (a) The general requirements shall be as follows:

- (1) The examiner must notify the county and the department of any change in third party examiner status.
- (2) The third party examiner must surrender the certificate to the department when the certificate has been revoked by the department or if the third party examiner becomes permanently inactive.
- (3) All third party examiner certificates shall be non-transferable.
- (4) The third party examiner's certificate shall be valid for the duration of the third party examiner's driver's license.

(b) An applicant for a third party examiner certificate shall comply with the requirements and instructions of the department for third party examiners, including audit procedures.

(c) The third party examiner agrees to hold the department and the county harmless from liability resulting from the third party examiner's administration of its category 4 and CDL skill tests.

[Eff JUN 15 1991] (Auth: HRS §286-246) (Imp: HRS §286-246)

§19-137-8 Training of third party examiners.

- (1) Training will be provided by the department to all qualified third party examiners and third party examiner applicants. Participants will be charged a fee for the course.
- (2) Training programs by the department for new applicants will be made available only when the current number of third party examiners is unable to meet the driver demand for third party examinations as determined by the department.

[Eff JUN 15 1991] (Auth: HRS §286-246) (Imp: HRS §286-246)

§19-137-9 Display of certification. All certified third party examiners shall display their certification to their applicant drivers at the approved testing facilities. [Eff JUN 15 1991] (Auth: HRS §286-246) (Imp: HRS §296-246)

§19-137-10 On-site inspections and audits. (a) All certified third party examiners shall allow the FHWA, the department, and the county periodically, but not less than once a year, with or without notice, to inspect and audit their third party testing program.

(b) Inspections and audits shall include an examination of:

- (1) Records relating to the third party testing program;
- (2) Evidence of compliance with the FMCSRs;
- (3) Skill testing procedures, practices and operations;
- (4) Vehicles used for testing;
- (5) Qualifications of third party examiners;
- (6) Effectiveness of the skill tests program by either testing a sample of drivers who have been issued a skill tests notice of pass by the third party examiner or having county or state employees take the skill tests from a third party examiner; and
- (7) Any other aspect of the third party examiner's operation that the department determines is necessary to verify that the third party examiner meets the requirements for certification.

(e) The inspecting agency 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 examiner within a two-week period. [Eff JUN 15 1991] (Auth: HRS §286-246) (Imp: HRS §286-246)

§19-137-11 Professional conduct. (a) No third party examiner or agent of the third party examiner shall accompany any category 4 or commercial driver's license applicant into any examining office rented, leased, or owned by the department or the county for the purpose of assisting the applicant in taking a written or skill tests driver examination given by the county.

(b) No third party examiner or agent of the third party examiner shall solicit any individual on the premises rented, leased, or owned by the department or the county for the purpose of enrolling that individual in any third party testing program. [Eff JUN 15 1991] (Auth: HRS \$286-246) (Imp: HRS \$286-246)

\$19-137-12 Advertising. (a) No third party examiner's advertisement shall contain the following information:

- (1) That the third party examiner's program can issue or guarantee the issuance of a category 4 or a commercial driver's license;
- (2) Imply that the program can in any way influence the county in the issuance of a category 4 or commercial driver's license; or
- (3) Imply that the program can obtain preferential or advantageous treatment from the county in the issuance of a category 4 or CDL.

(b) Third party examiners who are certified by the department may in their advertising state that they are "certified" but shall not indicate that a program is approved, sanctioned, or in any other way endorsed by the department over another program. [Eff JUN 15 1991] (Auth: HRS \$286-246) (Imp: HRS \$286-246)

\$19-137-13 Notification requirements. Third party examiners must:

- (1) Notify the department, in writing within ten days of any change in the third party examiner's name, address, telephone number, or third party examiner's status.
- (2) Notify the department before the end of the business day following the day the third party examiner receives notice of any change in the third party examiner's driving status, and send a written notification within ten days of that change.
- (3) Notify the department, in writing within ten days, of any of the following occurrences:
 - (A) The third party examiner terminates business operations.
 - (B) The third party examiner fails to comply with any of the department or county requirements.

- (C) The third party examiner receives notice from the county of the third party examiner's driver's license suspension, revocation, disqualification, cancellation, or DUI conviction.
- (4) Request and obtain written approval from the department of any proposed change in the skill tests route, off-road test site, test content, or examiner/administrative procedures.
[Eff JUN 15 1991] (Auth: HRS §286-246) (Imp: HRS §286-246)

§19-137-14 Test administration. (a) Skill tests shall be conducted in strict conformity with these requirements and with current test instructions provided by the department. Such instructions may include information on skill tests content, route selection/revision, test forms, examiner procedures, and administrative procedures and/or changes.

- (b) Skill tests shall be conducted:
- (1) On test routes and off-road test sites approved by the department.
 - (2) In a vehicle that is representative of the class and type of vehicle for which the category 4 or CDL applicant seeks to be licensed and for which the third party examiner is qualified to test.
 - (3) Using department approved content, forms and scoring procedures. [Eff JUN 15 1991] (Auth: HRS §286-246) (Imp: HRS §286-246)

§19-137-15 Denial/termination of third party testing authority. (a) The department may deny any application for a third party examiner certification upon the following grounds:

- (1) Failure to comply with or satisfy any of the requirements of this chapter;
- (2) Falsification of any information provided to the department.

(b) Any third party examiner may voluntarily terminate its third party testing authority and return the certificate to the department.

(c) The department may revoke, suspend, cancel or terminate the certification and require the return of the certificate of a third party examiner upon the following grounds:

- (1) Failure to comply with or satisfy any of the requirements of this chapter, the department's or the county's instructions or the third party examiner contract;
- (2) Falsification of any records or information relating to the third party testing authority;
- (3) Commission of any act which compromises the integrity of a third party examination; and
- (4) Driver license suspension, revocation, cancellation or disqualifications.

(d) The department may allow the third party examiner an opportunity to cure any deficiency within thirty days of receipt of notice by the department.


(e) Any applicant whose application has been denied by the department or any third party examiner whose third party examiner certification has been suspended, revoked, cancelled or terminated and who has not cured the deficiency may within ten calendar days after receiving the notice of denial, suspension, revocation, cancellation or termination appeal the department's action by submitting to the department a written request for an administrative review of the decision by the department. The request shall state the reasons why the application or third party examiner's authority should not be denied, suspended, revoked or terminated. Upon such request, the department shall respond in writing within thirty calendar days. Failure to request a review within ten calendar days after receiving notice of denial, suspension, revocation or termination of the application or third party examiner's testing authority shall be deemed a waiver of a right to appeal.

(g) Any person aggrieved by the administrative review decision of the department may appeal that decision to the department. The department may hold hearings on the appeal in accordance with chapter 91, Hawaii Revised Statutes. [Eff JUN 75 1991] (Auth: HRS §§286-246, 91-9) (Imp: HRS §§286-246, 91-9)


DEPARTMENT OF TRANSPORTATION

Chapter 19-137, Hawaii Administrative Rules, on the Summary Page dated March 15, 1991, was adopted on March 15, 1991, following public hearings held on November 19, 20, 21, 23, 26, and 28, 1990, after public notice was given in the Honolulu Advertiser on October 14 and 19, 1990, Molokai News on October 15 and 28, 1990, Hawaii Tribune-Herald on October 16, 1990, Maui News on October 23, 1990, and The Garden Island News on October 23, 1990.


The adoption of chapter 19-137 shall take effect ten days after filing with the Office of the Lieutenant Governor.


EDWARD Y. HIRATA
Director of Transportation

APPROVED AS TO FORM:


Deputy Attorney General

APPROVED:


JOHN WAIHEE
Governor
State of Hawaii

Dated: JUN 05 1991

Filed

JUN 5 1 34 PM '91
DEPT. OF TRANSPORTATION

AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 199__, by and between the STATE OF HAWAII, by its Director of Transportation, hereinafter referred to as "STATE"; and [_____] whose business address is _____, hereinafter referred to as the "THIRD PARTY EXAMINER";

WITNESSETH THAT:

WHEREAS, Act 320, Session Laws of Hawaii, 1989 has charged the Department of Transportation with the responsibility of implementing a Commercial Driver's License (CDL) program; and

WHEREAS, the CDL program contemplates the use of third party examiners to conduct driver examinations of category 4 and CDL applicants; and

WHEREAS, Act 342, Session Laws of Hawaii, 1990 requires third party examiners to be certified by the State before they can examine applicants for category 4 licenses under Section 286-102(b) Hawaii Revised Statutes and commercial driver's licenses; and

WHEREAS, Chapter 19-137, Hawaii Administrative Rules, entitled, "Category 4 and Commercial Driver Third Party Examiner Requirements" allows for a third party examiner to administer the CDL skill tests; and

WHEREAS, the THIRD PARTY EXAMINER has submitted an application to administer skill tests required for licensing category 4 and commercial driver license applicants; and

WHEREAS, the THIRD PARTY EXAMINER has met the requirements of 49 C.F.R. 383.75, Act 320, Session Laws of Hawaii, 1989 and Act 342, Session Laws of Hawaii, 1990;

NOW, THEREFORE, in consideration of the mutual promises the STATE and the THIRD PARTY EXAMINER mutually agree to the following:

1. The THIRD PARTY EXAMINER agrees to:

A. Conform its skill tests with all applicable statutes and regulations of the State of Hawaii and of the Federal Highway Administration.

B. Abide by and conform to all applicable requirements of Chapter 19-137, Hawaii Administrative Rules, entitled "Category 4 and Commercial Driver Third Party Examiner Requirements".

C. Save, indemnify, defend and hold harmless the STATE, its officers, agents, representatives, successors and assigns, and other governmental agencies from any and all suits or actions of every nature and kind which may be brought for or on account of any injury, death, or physical or psychological damage arising or growing out of the acts or omissions of the THIRD PARTY EXAMINER under this Agreement. Acceptance and approval of the THIRD PARTY EXAMINER'S performance under this Agreement shall not be deemed to be a waiver of the right of the STATE to take any action deemed appropriate for any act or omission of said THIRD PARTY EXAMINER.

D. Allow the Federal Highway Administration or its representatives and the STATE or its representatives to conduct random monitors, examinations, inspections and audits of its activities under this Agreement, without prior notice.

E. Allow the STATE or its representatives to conduct on-site inspections of its skill tests locations and examinations at least once annually.

F. Allow, not less often than once a year, county driver licensing employees and state employees to take the tests actually administered by the THIRD PARTY EXAMINER to test for compliance with this Agreement.

G. Obtain written permission prior to administering the skill tests from the county examiner of drivers who will issue the driver's license.

H. Display the third party examiner identification card to all applicants prior to conducting the skill tests. See attached sample.

I. Provide the county driver licensing agency and the driver applicant documented proof of the driver's skill tests results.

2. The STATE agrees to:

A. Certify the THIRD PARTY EXAMINER to administer driver license skill tests as specified in this Agreement and Chapter 19-137, Hawaii Administrative Rules, entitled "Category 4 and Commercial Driver Third Party Examiner Requirements" who has met all third party examiner requirements and qualifications.

B. Administer and enforce the provisions of Chapter 19-137, Hawaii Administrative Rules, entitled "Category 4 and Commercial Driver Third Party Examiner Requirements" to ensure that the THIRD PARTY EXAMINER is in compliance with this Agreement.

3. The STATE reserves the right to take prompt and appropriate action against the THIRD PARTY EXAMINER in the event the THIRD PARTY EXAMINER fails to comply with the terms of this

Agreement or with the requirements set forth in Chapter 19-137, Hawaii Administrative Rules, entitled "Category 4 and Commercial Driver Third Party Examiner Requirements".

4. This Agreement constitutes the sole and entire Agreement between the STATE and the THIRD PARTY EXAMINER relating to the authority to administer the driver license category 4 and CDL skill tests. No other terms or conditions shall form a part hereof, and this Agreement shall not be modified except by written amendment to this Agreement, duly signed by the authorized representatives of both parties. This Agreement may be terminated at any time with 30 days prior written notice, from either party to the other.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

State of Hawaii

Edward Y. Hirata
Its Director of Transportation

Third Party Examiner

