

## NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

### NOTICE OF FINAL RULEMAKING

#### TITLE 10. LAW

#### CHAPTER 4. ARIZONA CRIMINAL JUSTICE COMMISSION

[R06-210]

#### PREAMBLE

- 1. Sections Affected**

R10-4-501	Amend
R10-4-502	Amend
R10-4-503	Amend
R10-4-504	Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 41-2421(J)(5)  
Implementing statute: A.R.S. § 41-2421(J)(5)
- 3. The effective date of the rules:**

August 5, 2006
- 4. A list of all previous notices appearing in the *Register* addressing the final rule:**

Notice of Rulemaking Docket Opening: 11 A.A.R. 5219, December 9, 2005  
Notice of Proposed Rulemaking: 12 A.A.R. 380, February 10, 2006
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Pat Nelson, Program Manager  
Address: Arizona Criminal Justice Commission  
1110 W. Washington St., Ste. 230  
Phoenix, AZ 85007  
Telephone: (602) 364-1152  
Fax: (602) 364-1175
- 6. An explanation of the rule, including the agency's reason for initiating the rule:**

The Commission is updating the rules regarding the full-service forensic laboratory account to make them more clear, concise, and understandable.
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None
- 8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable
- 9. The summary of the economic, small business, and consumer impact:**

Because the rulemaking only makes the rules more clear, concise, and understandable, both the economic cost and benefit are minimal. The economic cost is the cost to the Commission to do the rulemaking. The economic benefit is the benefit of having rules that are more clear, concise, and understandable.

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**10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

Only nonsubstantive changes were made between the proposed rules and final rules.

**11. A summary of the comments made regarding the rule and the agency response to them:**

An oral proceeding was held on March 28, 2006. No one attended. No written comments were received regarding the rules.

**12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**13. Incorporations by reference and their location in the rules:**

None

**14. Was this rule previously made as an emergency rule?**

No.

**15. The full text of the rules follows:**

TITLE 10. LAW

CHAPTER 4. ARIZONA CRIMINAL JUSTICE COMMISSION

ARTICLE 5. FULL-SERVICE FORENSIC CRIME LABORATORY ACCOUNT

Section

R10-4-501.	Definitions
R10-4-502.	Grant Solicitation Process
R10-4-503.	Grant Application Review Evaluation; Approval by Decision of the Commission
R10-4-504.	Reports

ARTICLE 5. FULL-SERVICE FORENSIC CRIME LABORATORY ACCOUNT

**R10-4-501. Definitions**

In this Article:

1. "Account" means the Full-service Forensic Crime Laboratories Account established by A.R.S. § 41-2421(J)(5).
2. "Commission" means the Arizona Criminal Justice Commission established by A.R.S. § 41-2404.
3. "Full-service forensic crime laboratory" means a facility that:
  - a. Is operated by a criminal justice agency that is a political subdivision of the state;
  - b. Employs at least one full-time forensic scientist who holds a minimum of a bachelor's degree in a physical or natural science;
  - c. Is registered as an analytical laboratory with the Drug Enforcement Administration of the United States Department of Justice for possession of all scheduled, controlled substances; ~~and~~
  - d. Is accredited by the American Society of Crime Laboratory Directors/ Laboratory Accreditation Board; and
  - ~~e.~~ Provides, at a minimum, services in the areas of drugs, serology and controlled substances, forensic biology, DNA, and blood and breath alcohol, firearms, and toolmarks.

**R10-4-502. Grant Solicitation Process**

**A.** The Commission shall annually publish and forward to all Arizona criminal justice agencies that operate a full-service forensic crime laboratory post on the Commission's internet site, which is [www.azacjc.gov](http://www.azacjc.gov), a grant solicitation for distribution of Account monies. When the grant solicitation is posted, the Commission shall send an electronic notice of the posting to all Arizona criminal justice agencies that operate a full-service forensic crime laboratory.

**B.** The Commission shall ensure that the grant solicitation ~~shall contain~~ contains:

1. The Commission's goals for the grant program for the ~~current~~ allocation year,
2. Applicant eligibility criteria,
3. The format in which a grant applications ~~must~~ application is to be submitted,
4. The date by which a grant applications ~~must~~ application is to be submitted,
5. Grant application evaluation criteria,
6. Project expenses for which Account monies may be used,
7. The period in which all Account monies must be expended,
8. Account money reversion criteria and process, and

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9. The award denial appeal process.

**R10-4-503. Grant Application Review Evaluation; Approval by Decision of the Commission**

- A. The Commission shall ~~review~~ evaluate each grant application and make a decision to ~~approve or disapprove an application award or deny a grant~~ within 120 days of the date by which grant applications are due.
- B. If the Commission determines additional information is needed to facilitate its review evaluation of an application, the Commission shall request from the applicant:
  - 1. Additional information, or
  - 2. Application ~~modifications~~ modification.
- C. An applicant from whom additional information or application modification is requested shall submit the information or modification to the Commission within 10 business days from the date of the request.
- ~~C.D.~~ After review completing its evaluation of an application, the Commission shall vote to ~~approve or disapprove an application award~~ in whole or in part, or deny a grant based on:
  - 1. The grant criteria published in the grant solicitation;
  - 2. The amount of funds available for ~~the current~~ allocation year; and
  - 3. Compliance with the application format.

**R10-4-504. Reports**

- ~~A.~~ Within ~~20~~ 15 days after the end of ~~the first through third each calendar quarters~~ quarter, a grantee shall submit a written report ~~to , on a form prescribed by the Commission,~~ containing:
  - ~~1. The amount of Account money available for use at the beginning of the ending quarter;~~
  - ~~2.1. An itemized accounting of the amount of money expended or encumbered during the quarter~~ A financial report that includes itemized budget information, and
  - 2. An activity report that documents activities supported by the grant funds and includes:
    - a. A narrative of activities undertaken during the reporting period;
    - b. An evaluation of progress toward achieving the goals and objectives in the grant application;
    - c. An evaluation of adherence to the time-frames in the grant application; and
    - d. A description of equipment purchased with grant funds during the reporting period, how the equipment is related to achieving the goals and objectives of the project, and the current status of the equipment, such as whether it is operational, waiting to be installed, or undergoing testing; and
  - 3. A copy of any deliverable provided by a consultant paid with grant funds.
  - ~~3. A projected date of expenditure of encumbered Account money, and~~
  - 4. The unspent and unencumbered balance to begin the next quarter.
- B. Within 60 days after the end of the fiscal year, a grantee shall submit a written report to the Commission containing all of the following information:
  - 1. The beginning balance of the Account money for the fiscal year;
  - 2. The total amount of Account money expended by the grantee during the fiscal year;
  - 3. The total amount of the encumbrances remaining at the end of the fiscal year;
  - 4. An itemized accounting of how the expended Account money (including outstanding encumbrances) is related to the stated project goals and objectives, and
  - 5. A narrative assessment of the effective and efficient use of Account money to meet stated goals and objectives during the fiscal year.

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TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION  
COMMERCIAL PROGRAMS

[R06-206]

PREAMBLE

**1. Sections Affected**

Article 7  
R17-5-701  
R17-5-702  
R17-5-703  
R17-5-704  
R17-5-705  
R17-5-706

**Rulemaking Action**

Repeal  
Repeal  
Repeal  
Repeal  
Repeal  
Repeal  
Repeal

**2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statutes: A.R.S. §§ 28- 363 and 28-366

Implementing statute: A.R.S. § 28-5101

**3. The effective date of the rules:**

August 5, 2006

**4. A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 11 A.A.R. 815, February 18, 2005

Notice of Proposed Rulemaking: 11 A.A.R. 3422, September 9, 2005

**5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Janette M. Quiroz

Address: Administrative Rules Unit  
Arizona Department of Transportation  
Motor Vehicle Division, Mail Drop 530M  
1801 W. Jefferson  
Phoenix, AZ 85007

Telephone: (602) 712-8996

Fax: (602) 712-3373

E-mail: jmquiroz@azdot.gov

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at <http://www.azdot.gov/mvd/mvdrules/rules.asp>

**6. An explanation of the rule, including the agency's reason for initiating the rule:**

Currently Third-party Program provisions are contained within 17 A.A.C. 5, Article 7, and 17 A.A.C. 7, Articles 1 through 4. This rulemaking action will repeal the rules within 17 A.A.C. 5, Article 7, and consolidate all third-party rules into one Chapter: 17 A.A.C. 7, Articles 1 through 8.

**7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

**8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**9. The summary of the economic, small business, and consumer impact:**

In accordance with A.R.S. § 28-1055(d)(3), no economic impact statement was prepared for the repeal of these rules.

**10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

None

**11. A summary of the comments made regarding the rule and the agency response to them:**

None

**12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**13. Incorporations by reference and their location in the rules:**

None

**14. Was this rule previously made as an emergency rule?**

No.

**15. The full text of the rules follows:**

**TITLE 17. TRANSPORTATION**

**CHAPTER 5. DEPARTMENT OF TRANSPORTATION  
COMMERCIAL PROGRAMS**

**ARTICLE 7. ~~THIRD-PARTY PROGRAMS~~ REPEALED**

Section

- R17-5-701. ~~Definitions~~ Repealed
- R17-5-702. ~~Third-party tester/Contract agent~~ Repealed
- R17-5-703. ~~Fees~~ Repealed
- R17-5-704. ~~Audit~~ Repealed
- R17-5-705. ~~Panel review~~ Repealed
- R17-5-706. ~~Third-party Driver License Processor and Tester~~ Repealed

**ARTICLE 7. ~~THIRD-PARTY PROGRAMS~~ REPEALED**

**R17-5-701. ~~Definitions~~ Repealed**

The following definitions are applicable to Article 8, unless otherwise stated in statute or a specific rule:

1. ~~“Business entity” means an independent commercial establishment engaged in the professional use of commercial motor vehicles.~~
2. ~~“Contract agent” means a political subdivision, business entity or nonprofit organization engaged in the professional use of commercial motor vehicles who are authorized by the Division to employ third-party testers.~~
3. ~~“Demonstration test” means a driving examination in a commercial motor vehicle that includes: a pretrip inspection, a basic skills test and a road test as referenced in the Division Examiner’s Manual.~~
4. ~~“Director” means the Division Director, Motor Vehicle Division, Arizona Department of Transportation.~~
5. ~~“Division” means the Motor Vehicle Division, Arizona Department of Transportation.~~
6. ~~“Employee” means a person who is currently employed or under contract or working as a volunteer as a commercial motor vehicle driver.~~
7. ~~“Manual” means the Division’s approved examiner’s text for the demonstration test which contains instruction for test methods and procedures.~~
8. ~~“Nonprofit organization” means a group united with a common interest, not seeking profit.~~
9. ~~“Revocation” means termination of a certification for a maximum period of one year for noncompliance with requirements set forth by the Division.~~
10. ~~“Third-party tester” means a person who is certified by the Division to conduct demonstration tests to drivers of commercial motor vehicles.~~

**R17-5-702. ~~Third-party tester/Contract agent~~ Repealed**

**A. ~~Certification requirements.~~**

1. ~~A third-party tester shall:~~
  - a. ~~Be employed or under contract for an employer certified as a contract agent.~~
  - b. ~~Have five years of driving experience, and/or five years training experience, or a five-year combination of both, pertaining to the operation of commercial motor vehicles.~~
  - c. ~~Possess a current license for the operation of a commercial motor vehicle representative of the vehicle in which~~

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the demonstration test is to be given.

- d. Have no driver's license suspensions, revocations, cancellations, disqualifications or convictions related to driving under the influence within three years prior to the date of application.
- e. Successfully complete the Division's approved third-party tester training course.

2. The contract agent shall:

- a. Employ or contract at least one person recommended to be a third-party tester.
  - b. Maintain a regularly occupied structure.
  - e. Provide an office for the third-party tester that shows a clear separation between that office and the normal operation.
  - d. Provide an adequate, safe area to accommodate the related demonstration test.
  - e. Own, lease or rent at least one vehicle representative of the type of vehicle or group of vehicles which may be used for testing.
    - i. Vehicles shall be maintained in a safe operating condition.
    - ii. Vehicles shall be in compliance with registration and insurance requirements set forth in Title 28, Arizona Transportation Laws.
  - f. Maintain driver qualification files, for a minimum of three years, for each employed driver.
  - g. Possess a copy of the third-party tester's certificate.
  - h. Retain records of demonstration tests administered to include:
    - i. Name, date of birth, driver's license number and social security number of those tested.
    - ii. The date administered.
    - iii. The class of vehicle used.
    - iv. A copy of the score sheet indicating the results of the demonstration test.
    - v. Name and certification number of the third-party tester who administered the test.
  - i. Maintain financial records for the testing program to include: the terms of payment for every driver applicant tested, records of receipts and written contracts, if applicable, with any person(s) being tested.
3. Applicants who do not meet requirements as set forth in this administrative rule shall be denied certification.

**B.** Application-

- 1. The Division shall provide forms, as set forth in this rule in Appendix A (Third-party Tester) and B (Contract agent). The forms shall be submitted to: Motor Vehicle Division, Commercial Driver License Section, 1801 West Jefferson Street, Phoenix, Arizona 85007.
- 2. The Division may request a certified copy of the third-party tester applicant's motor vehicle, a record that shall be attached to the application.
- 3. In cases of discrepancies on an application an applicant shall be given 30 working days from the date of application to meet requirements or the application shall be canceled.

**C.** Certificates-

- 1. The Division shall issue certificates as set forth in this rule in Appendix C (Third-party tester) and D (Contract agent). The certificates shall be numbered and shall be valid for one year.
- 2. Contract agent and third-party tester certificates shall be prominently displayed in an area readily visible and accessible to test applicants and to agents of the Division.
- 3. The Division shall issue a duplicate certificate if the original is lost, stolen or mutilated when the certified person submits a written request and an appropriate fee to the Division.
- 4. A duplicate certificate shall be dated, marked DUPLICATE and maintain the expiration date of the original certificate.
- 5. The Division shall provide a certificate of competency form as set forth in Appendix E of this rule. The third-party tester shall issue a certificate of competency to an applicant who successfully completes the demonstration test. The certificate of competency shall be valid for 30 calendar days from the date of the demonstration test.

**D.** Third-party tester duties-

- 1. Verify that the driver applicant has one of the following:
  - a. A Division instruction permit for a class A, B or C driver's license.
  - b. A current chauffeur's license, acceptable only until April 01, 1992.
- 2. Require an applicant to display a photo identification prior to the demonstration test.
- 3. Conduct demonstration tests in accordance with instructions provided in the Division manual. If at any point of the demonstration test the third-party tester determines it to be hazardous or unsafe to continue, the test shall be terminated and the score sheet marked accordingly.
- 4. Complete and sign the demonstration test score sheet.
- 5. Witness the driver applicant's signature on the demonstration test score sheet.
- 6. Complete, sign and issue a certificate of competency to an applicant who successfully passes the demonstration test. The Division shall furnish this certificate, as set forth in Appendix E of this rule.
- 7. Maintain copies of demonstration test score sheet and certificate of driver competency.

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8. ~~Submit to random onsite check rides. Division agents shall administer check rides that demonstrate the third-party tester's continued ability to render the demonstration test.~~
  9. ~~Attend ongoing Division training.~~
  10. ~~Give written notice immediately to the Division and the contract agent when their commercial driver's license is suspended, revoked, canceled or disqualified.~~
  11. ~~Give written notice to the Division and the contract agent of changes in the demonstration test route and include a map, drawing or written description of the new route.~~
- E.** ~~Enforcement.~~
1. ~~Eligibility information shall be subject to inspection(s) prior to a certificate being issued.~~
  2. ~~Within 10 working days a third-party tester or contract agent shall submit written notification to the Division when there is a change in certification requirements.~~
  3. ~~The Division shall investigate complaints submitted concerning any act which would compromise the integrity of the program. The Division may require a written report, from any involved party, be submitted within 10 working days from receipt of a request.~~
  4. ~~The contract agent or third-party tester shall not use advertisements which imply:~~
    - a. ~~A certificate of competency guarantees the issuance of a commercial driver's license.~~
    - b. ~~The third-party tester program will influence the Division in any manner in the issuance of a commercial driver's license.~~
    - e. ~~Preferential or advantageous treatment from the Division.~~
- F.** ~~Penalty. An immediate revocation notice shall result for:~~
1. ~~False and/or fraudulent records.~~
  2. ~~Second or subsequent violations for not maintaining requirements and responsibilities as set forth in this rule.~~
  3. ~~Misuse of advertisements as referenced in Section E-4 of this rule.~~
  4. ~~Failure to allow or cooperate in an audit.~~

**R17-5-703. Fees Repealed**

Fees are payable at the time of application and shall not be prorated or refunded. Checks and money orders shall be made payable to: Motor Vehicle Division, Arizona Department of Transportation.

1. ~~Employer certification:~~
  - a. ~~Certificate, 12-month period, \$50.00.~~
  - b. ~~Duplicate certificate, \$25.00.~~
2. ~~Contract agent:~~
  - a. ~~Certificate, \$50.00 annually.~~
  - b. ~~Duplicate certificate, \$25.00.~~
3. ~~Third-party tester:~~
  - a. ~~Certificate, \$25.00 annually.~~
  - b. ~~Duplicate certificate, \$25.00.~~

**R17-5-704. Audit Repealed**

- A.** ~~To assure continued compliance with certification requirements the Division may make random, onsite inspections, during normal business hours, to audit the operation, facility and/or records.~~
1. ~~Persons who are certified shall submit copies of related documents to the Division upon request.~~
  2. ~~After a Division audit a warning letter, to allow 30 calendar days for compliance, shall be issued for failure to:~~
    - a. ~~Maintain requirements or records as referenced in administrative rules 17 A.A.C. 5, Article 7.~~
    - b. ~~Notify the Division of requirement or program changes.~~
- B.** ~~Failure to comply with the provisions set forth in a warning letter or failure to allow or cooperate in an audit shall result in a notice of revocation of certification.~~

**R17-5-705. Panel review Repealed**

- A.** ~~When the Division determines a certification is to be denied or revoked, written notice shall be served either in person or by mail. Revocations shall be effective 20 calendar days from the date of notice.~~
- B.** ~~One person may request a Division review when certification is denied or revoked. A timely written request shall stay a revocation until a panel conducts a review and determination has been made. Written requests shall be submitted to the Director at the following address: Motor Vehicle Division, Commercial Driver's License Section, 1801 West Jefferson Street, Phoenix, Arizona, 85007.~~
- C.** ~~The Director shall appoint a review panel consisting of three persons to determine if revocations or denials shall be upheld.~~
1. ~~The affected parties may request to appear at the review, have counsel appear in their behalf or to have a summary review which does not require an appearance.~~
  2. ~~The Division shall send written notice, to the person, of the time, date and place of the review and of the final decision after the review.~~

**R17-5-706. ~~Third-party Driver License Processor and Tester~~ Repealed**

**A. Definitions:**

1. "Third party Processor" means a business entity which is authorized by the Director to employ third party testers.
2. "Director" means the Assistant Director of the Arizona Department of Transportation, Motor Vehicle Division, or the Director's designee.
3. "Division" means the Motor Vehicle Division of the Arizona Department of Transportation.
4. "Principal or established place of business" means a permanent site or location at which the business of a driver license processor is or will be conducted.
5. "Third party tester" means a person who is certified by the Director to administer driver examinations for Class D or M driver licenses.

**B. Third party Processor Requirements:**

1. Before authorization:

- a. The third party processor applicant shall be in compliance with all applicable business laws of Arizona.
- b. The Director shall authorize a business entity as a third party processor only if no partner, officer, director, agent, or shareholder who owns 20% or more of the business entity, and no person who will be involved in the licensing process for the third party processor applicant:
  - i. Had an authorization to do business revoked or suspended by the Director during the previous three years;
  - ii. Has an uncompleted term of imprisonment, probation, or parole, or fine payment resulting from conviction for fraud or a licensing related felony during the previous 10 years;
  - iii. Has an uncompleted term of imprisonment, probation, or parole, or fine payment resulting from conviction for any felony other than that described in subsection (B)(1)(b)(ii) during the previous five years; or
  - iv. Had a license or operating authorization concerning the testing for or issuance of driver licenses revoked or suspended in Arizona or any other state during the previous two years.
- c. The third party processor applicant shall designate an agent within Arizona to accept service of process.
- d. The third party processor applicant shall demonstrate acceptable financial responsibility to protect any liability that may arise from the issuance of a permit. Acceptable financial responsibility shall be demonstrated as follows:
  - i. General liability insurance in the amount of at \$5,000,000 of which at least \$1,000,000 is primary coverage. If the policy deductible provision exceeds \$100,000, then a principal of the third party processor shall provide the Director with a sworn affidavit stating that the Department of Transportation and the state of Arizona are included in the third party processor's self insured program to the same extent as an additional insured endorsement on the policy would provide.
  - ii. The Arizona Department of Transportation and the state of Arizona shall be named as additional insureds on the insurance policy.
  - iii. The primary coverage shall be issued by an insurance company licensed to do business in Arizona by the Arizona Department of Insurance.
  - iv. The policy shall provide that the Director shall be notified at least 30 days prior to any policy cancellation, nonrenewal, or change in provisions. Additionally, the policy shall provide that the Director shall be notified if the insurance company becomes insolvent.
  - v. The policy, together with all endorsements and exclusions, shall be provided to the Director at time of initial application.
  - vi. No authorization shall be issued until the insurance policy is approved by the Director.
  - vii. Nothing in this requirement places any limitations on any indemnification provisions in the contract between the third party processor and the Director.
- e. The third party processor applicant shall enter into a written contract with the Director to conduct business as a third party processor. The contract shall include the following provisions:
  - i. An indemnification agreement;
  - ii. The form and manner in which records shall be maintained and processed, and
  - iii. Security provisions for the protection of computer access and for the protection of data received from the Division.

2. After authorization:

- a. The third party processor shall employ at least one person as a third party tester.
- b. The third party processor shall maintain a principal or established place of business within this state with adequate and safe facilities to accommodate the related written and demonstration tests.
- c. The third party processor shall maintain all vehicles used in demonstrations and testing in a safe operating condition and comply with all registration and insurance requirements for vehicles as set forth in A.R.S. Title 28.
- d. The third party processor shall possess a copy of each third party tester's certificate.
- e. The third party processor shall file and maintain a current mailing address with the Director.
- f. The third party processor shall continue to be in compliance with the pre authorization requirements set forth in



subsection (B)(1) of this Section.

**C.** Third-party tester certification requirements.

1. A third-party tester shall be at least 18 years of age and employed by a third-party processor.
2. A third-party tester shall successfully complete the Division's third-party tester training program and remain current with any continuing education requirements of the Division.
3. A third-party tester shall not have:
  - a. Had an authorization to do business revoked or suspended by the Director during the previous three years;
  - b. Had an uncompleted term of imprisonment, probation, or parole, or fine payment resulting from conviction for fraud or a licensing-related felony during the previous 10 years;
  - c. Had an uncompleted term of imprisonment, probation, or parole, or fine payment resulting from conviction for any felony other than that described in subsection (C)(3)(b) during the previous five years; or
  - d. Had a license or operating authorization concerning the testing for or issuance of driver licenses revoked or suspended in Arizona or any other state during the previous two years.
4. A third-party tester shall at all times be subject to a criminal investigation which may be conducted at random at time of application and with good cause thereafter with the costs borne by the third-party processor.
5. A third-party tester shall comply with all applicable statutes, rules, and contract provisions governing the testing of applicants for driver licenses.
6. A third-party tester shall have five years of driving experience, plus a total of five years' experience in driver license issuance, driver education instruction, professional driving instruction, or a combination thereof.
7. A third-party tester shall possess a current license for the operation of the type vehicle in which the written or demonstration tests are to be given.
8. A third-party tester shall not have had any driver license suspension, revocation, cancellation, disqualification, denial, or other license withdrawal nor any conviction related to driving while under the influence of intoxicating liquors or drugs, reckless driving, racing upon a highway, or leaving the scene of an accident within the five-year period prior to application.

**D.** Application. The Division shall provide the application for third-party tester certification and third-party processor authorization. The completed application shall be submitted to: Arizona Motor Vehicle Division, 1801 W. Jefferson Street, Phoenix, Arizona 85007.

**E.** Duties and Responsibilities of Third-party Processor.

1. A third-party processor shall retain records of all written and demonstration tests administered for a period of three years to include:
  - a. Accounting records documenting receipt of fees;
  - b. Copies of all applications and score sheets setting forth the name, driver's license number, social security number, and date of birth of those tested, the date of test and class of license tested, and the name and certification number of the third-party tester.
2. A third-party processor shall not administer any examination unless the applicant meets the requirements of all applicable rules and statutes governing licensing.
3. A third-party processor shall ensure that all testing is done in accordance with the Division training manual and that all recording and reporting are done on forms approved by the Director.
4. A third-party processor shall submit to random onsite inspections by the Director.
5. A third-party processor shall make records available for and cooperate in any audit by the Director.
6. A third-party processor shall comply with all applicable rules, statutes, and contract provisions.
7. A third-party processor shall collect licensing fees and forward same to the Director by the close of the next business day.
8. If a third-party processor adds or changes a partner, officer, director, agent, shareholder owning 20% or more of the corporation, or adds or changes any other employee or person who may be involved in the licensing process or business and who was not included in the application, the third-party processor shall give written notification to the Director within 30 days of any change or addition. The new partner, officer, director, agent, shareholder owning 20% or more of the corporation, or employee or person who is involved in the licensing process or business is subject to this rule and the provisions of the contract between the third-party processor and the Director, and is also subject to a criminal background investigation with the cost borne by the third-party processor.
9. A third-party processor shall give written notice immediately to the Director of any tester whose driver license is suspended, revoked, canceled, disqualified, denied, or otherwise withdrawn.
10. A third-party processor shall not conduct any examinations on a test route nor change an approved test route without obtaining approval of the route from the Director.
11. A third-party processor shall submit within 10 days any report required by the Director as part of a complaint investigation.
12. A third-party processor shall not employ advertising which implies the guaranty of a license, the use of influence with the Division, or any preferential treatment by the Division.

Notices of Final Rulemaking

**F. Audit:**

1. To assure continued compliance with authorization and certification requirements, the Division may conduct random, onsite inspections during normal business hours to audit the business records of the third party processor.
2. Records shall be made available for audit at the third party processor's place of business. If the records are maintained at a location outside the state of Arizona, the third party processor shall either make the records available at a location within Arizona designated by the Director or make the records available at the third party processor's place of business outside the state of Arizona. Audits conducted at a location out of state shall be at the third party processor's expense. Audit expenses, including per diem and travel expenses, are to be prepaid according to Arizona Department of Transportation Administrative Procedures, Chapter 6.02 Travel Authorization Procedure dated January 28, 1991, which is incorporated into and made a part of this rule by reference and on file at the Office of the Secretary of State and also on file at the Arizona Department of Transportation Motor Vehicle Division Executive Hearing Office. This rule does not include any later amendments or additions of the incorporated matter.
3. Failure to allow or cooperate in an audit shall result in revocation of the third party processor authorization.

**G. Background investigation:**

1. The Director shall conduct random criminal background investigations of any partner, officer, director, agent, or shareholder who owns 20% or more of a business entity that has applied for authorization as a third party processor and of any third party tester or other person who will be involved in the licensing process for the business entity.
2. The Director shall, with good cause, conduct criminal background investigations after a business entity has been authorized as a third party processor.
3. The cost of a criminal background investigation shall be paid by the business entity that has applied for or received authorization as a third party processor.

**H. Denial and Revocation; Appeal:**

1. The application for third party tester certification or third party processor authorization shall be denied if the applicant fails to meet the requirements set forth in this rule.
2. If the application contains a material omission or a false statement, the application shall be denied and the applicant shall not be allowed to reapply for a period of 12 months.
3. The third party tester certification or third party processor authorization shall be revoked upon a determination by the Director that the third party tester or third party processor is no longer qualified for certification or authorization under this rule or is in breach of the contract with the Division.
4. The third party tester certification or third party processor authorization shall be revoked upon a determination by the Director that the third party tester or third party processor violated the provisions of this rule or other applicable rule or statute.
5. The order of revocation shall be preceded by a notice of immediate suspension and intent to revoke. The notice shall be sent by first class mail, postage prepaid, to the address of the third party processor on file with the Director.
6. The notice shall inform the third party processor that the processor or third party tester is no longer authorized to administer examinations and of the right to a hearing and the procedure for requesting a hearing.
7. The order of revocation shall become effective 25 days after the mailing date of the notice unless a timely request for hearing is submitted.
8. The third party tester or third party processor shall not be allowed to reapply for authorization or certification following revocation if the revocation was based on a fraudulent act or a knowing and intentional violation or attempt to violate the provisions of the contract, this rule, or any other related rule or statute.
9. If the application for third party tester certification or third party processor authorization is denied, the denial shall be sent by first class mail, postage prepaid, to the address shown on the application. The notice of denial shall inform the applicant of the right to a hearing and the procedure for requesting a hearing.
10. Hearings, rehearings, and appeals shall be noticed and conducted in accordance with A.R.S. § 41-1061 et seq. and 17 A.A.C. 1, Article 5.