**TITLE 595. DEPARTMENT OF PUBLIC SAFETY**

**CHAPTER 11. COMMERCIAL DRIVER LICENSES**

**RULEMAKING ACTION:**

 EMERGENCY adoption

 **RULES:**

 Subchapter 5. Commercial Driver License Third-Party Examiners

 595:11-5-5 Requirements for certification as a third-party examiner, display of certificate, certification renewal [AMENDED]

**AUTHORITY:**

 Commissioner of Public Safety, 47 O.S. §2-108, 47 O.S. §6-110, 47 O.S. §802

**ADOPTION:**

September 16, 2021

**EFFECTIVE:**

Immediately upon Governor's approval

**EXPIRATION:**

Effective through September 14, 2022, unless superseded by another rule or disapproved by the Legislature

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATIONS BY REFERENCE:**

N/A

**FINDING OF EMERGENCY:**

The proposed rules are required for the rules to remain consistent with the Oklahoma Statues amended by HB1059. HB1059 was passed by the 58th Legislature with an emergency making it effective immediately.

**GIST/ ANALYSIS:**

The rules clarify that a fingerprint based national criminal history check is also required for third party examiners and commercial driving school instructors. The information in the rules is renumbered and reorganized in order to accommodate these changes.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253 (F):**

**SUBCHAPTER 5. Commercial Driver License Third-Party Examiners**

**595:11-5-5.** **Requirements for certification as a third-party examiner, display of certificate, certification renewal**

(a)    **Requirements and application for certification.**A driver training instructor [see OAC 595:11-7-4 for instructor qualifications] may apply for certification as a third-party examiner by completing an application provided by the Department [see OAC 595:11-5-13]. The applicant shall meet the following requirements:

(1)    Meet all the requirements for a Driver License Examiner of the Department [47 O.S.§ 2-106(c) and (d)].

~~(2)    Complete an application provided by the Department [see OAC 595:11-5-13] and submit a nationwide criminal background check [FMCSR, 49 CFR 384.228(g)] certified within the immediately preceding thirty (30) days and, if the applicant has not lived in Oklahoma for the immediately preceding five (5) years, a criminal background check from the agency responsible for keeping criminal history in the state or states of previous residence.~~

(2) Upon initial review of a completed application, the Department will provide the applicant with instructions to obtain a current electronic national criminal history record check in accordance with the Oklahoma Statutes.

(3) A current electronic national criminal history record check, for a third-party examiner license, is required when an applicant has any break in licensing and the result of the previous electronic national criminal history record check on file with the Department for the certified school employee is more than one (1) year old.

~~(3)~~(4)    Be employed by a certified school.

~~(4)~~(5)    Have and maintain throughout the time period to be covered by the certification:

(A)    a valid Oklahoma commercial driver license for the class or classes of vehicle, including any endorsement or endorsements, for which the instructor desires to administer examinations; provided, the applicant shall not be required to have a hazardous materials endorsement (endorsement H),

(B)    in order to administer school bus examinations, a valid School Bus Workshop Instructor Certificate issued by the State Board of Education with three (3) years of instructor experience, and

(C)    in order to administer truck examinations, a valid certificate issued by the Oklahoma Board of Career and Technology Education or the Department showing the applicant has met the current requirements with three (3) years of instructor experience.

~~(5)~~(6)    Successfully complete a course of instruction prescribed by the Department [see 595:11-5-6].

~~(6)~~(7)    Have full use of both upper and lower extremities.

~~(7)~~(8)    Agree to submit examination reports to the Department by electronic means immediately upon completion of each examination.

~~(8)~~(9)    Be required to meet at DPS Headquarters with the CDL Coordinator or designee to discuss the program requirements and expectations.

~~(9)~~(10)    Submit required initial fee of One Thousand Dollars ($1000.00). If an applicant for the Third-Party Examiner program is employed by a public school, technology center or state entity, the fee may be waived by the Department.

(b)    **Ineligibility based upon driving record or criminal record.**A driver training instructor shall be deemed to be ineligible for certification as a third-party examiner upon evidence of a record of any of the following convictions:

(1)    Two (2) or more convictions for a moving traffic offense within the twelve (12) months immediately preceding the application, or

(2)    Any alcohol- or drug-related conviction requiring the Department to revoke, suspend, or disqualify the instructor's driving privilege within the five (5) years immediately preceding the application.

(3)    Any conviction for any offense which required or will require the Department to take any type of action against the instructor within the three (3) years immediately preceding the application, including, but not limited to:

(A)    a warning letter, or

(B)    a revocation, suspension, cancellation, denial or disqualification of the instructor's driving privileges.

(4)    Any misdemeanor conviction, except for a misdemeanor conviction for a traffic offense, within the five (5) years immediately preceding the application.

(5)    Any felony conviction within the last ten (10) years in this state or any state or other state or country or any conviction involving fraudulent activities in this state or any other state or country.

(c)    **Certification.**Upon acceptance and approval by the Department of the application for certification from a driver training instructor, or upon acceptance and approval by the Department of the application for renewal of certification from a third-party examiner, and upon completion to the satisfaction of the Department by the instructor or third-party examiner of all other requirements for certification, the Department shall provide the third-party examiner with:

(1)    a certificate evidencing approval by the Department as a third-party examiner, which shall be posted at the examination location at the certified school and in full view of the public. The certification will be valid for one (1) year.

(2)    an identification card to be carried by the third-party examiner whenever the examiner is administering an examination.

(3)    an official seal to be used by the third-party examiner to be used as provided in 595:11-5-14.

(4)    If the initial application for approval is denied, a school or applicant may re-apply no more than two (2) times per calendar year.

(5)    Any applicant denied certification under this subsection may request an administrative hearing pursuant to OAC 595:1-3-1 through 595:1-3-20.

(d)    **Renewal of certification.**

(1)    A certified third-party examiner shall be eligible for renewal of certification if the examiner:

(A)    submits an application for certification renewal upon a form provided by the Department no later than December 1 of the expiration year of the certification [see 595:11-5-13],

(B)    submits a nationwide criminal background check certified within the immediately preceding thirty (30) days,

(C)    submits a current copy of the State Department of Education instructor certificate, or a valid certificate issued by the Oklahoma Board of Career and Technology Education confirming instructor certification or a valid certificate issued by the Department confirming instructor certification.

(D)    is currently employed by a certified school,

(E)    currently meets the requirements and standards of the Department as prescribed by this Subchapter,

(F)    administered ten (10) or more full examinations within the twelve (12) months immediately preceding the application for renewal of certification, and

(G)    submits required renewal fee of Five Hundred Dollars ($500.00). If applicant for the Third-Party Examiner program is employed by a public school, technology center or state entity, the fee may be waived by the Department.

(2)    Any driver training instructor who was previously certified as a third-party examiner and whose previous certification has been expired for not more than one (1) year may make application for renewal of certification as provided in paragraph (1) of this section.

(3)    Any Third-Party Examiner who does not qualify for renewal of certification may apply, after a period of at least one (1) year from the date the examiner was notified he or she was not qualified for renewal of certification, for certification as a third-party examiner and shall meet all requirements as for an initial application for certification as a third- party examiner.

(4)    Upon any Third-Party Examiner's second failure to meet the requirement to conduct ten (10) or more full examinations within the twelve (12) months immediately preceding the application for renewal of certification, the Third-Party Examiner shall be removed from the Third-Party Examiner Program. The Third-Party Examiner must wait a minimum of one (1) year before reapplying to the Third-Party Examiner Program.