

# TITLE 140 BUREAU OF MOTOR VEHICLES

## Regulatory Analysis LSA Document #23-734

### I. Description of Rule

#### a. History and Background of the Rule

This rulemaking was prompted both by changes to state law and updates to federal regulations. Specifically, the amendment to 140 IAC 4-4-9 is consistent with HEA 1050, which added Ind. Code § 9-24-10-4.5 as a new section. The amendments to 140 IAC 7-5 are in response to the implementation of the Entry-Level Driver Training under 49 CFR § 380, Subparts F and G, which went into effect on February 7, 2022. Lastly, the amendment to 140 IAC 7-3-6.5 maintains compliance with federal regulations; specifically, 49 CFR § 391, Subpart E.

#### b. Scope of the Rule

HEA 1050 added Ind. Code § 9-24-10-4.5 as a new section, which allows a driver training school to administer a driving skills test to an individual who hold a valid learner's permit. The proposed amendment to 140 IAC 4-4-9(a)(2) removes the requirement that an individual be age eligible to apply for a driver's license before a driving training school may administer a driving skills test, which is consistent with Ind. Code § 9-24-10-4.5 and the passage of HEA 1050.

140 IAC 7-3-6.5 establishes the physical examination requirements for CDL holders. The proposed amendment to 140 IAC 7-3-6.5 strikes provisions in subsections (a) which requires a CLP or CDL applicant to carry a medical examiner's certification on their person. This provision is inconsistent with 49 CFR § 391, Subpart E. Specifically, 49 CFR § 391.41(a)(2) no longer requires a driver who previously submitted a current medical examiner's certificate to carry the medical examiner's certificate on his or her person. The proposed amendment to 140 IAC 7-3-6.5 is necessary to maintain compliance with federal regulations.

140 IAC 7-5 governs the licensing, operation, administration, and other matters relating to truck driver training schools. 49 CFR § 380, Subpart F (49 CFR § 380.600 – 380.609) establishes the training requirements for entry-level drivers on and after February 7, 2022. Additionally, 49 CFR § 380, Subpart G (49 CFR § 380.700 – 380.725) establishes the requirements for entry-level driver training providers on or after February 7, 2022. The BMV proposes to add 140 IAC 7-5-0.5 as a new section, which approves a business enterprise that educates, trains, or otherwise prepares a person to operate a commercial motor vehicle to operate in the state if the business enterprise is listed on the Training Provider Registry as described in 49 CFR § 380, Subpart G.

In addition, the BMV proposes to repeal 140 IAC 7-5-1, 140 IAC 7-5-2, 140 IAC 7-5-3, 140 IAC 7-5-4, 140 IAC 7-5-5, 140 IAC 7-5-6, 140 IAC 7-5-7, 140 IAC 7-5-8, 140 IAC 7-5-9, 140 IAC 7-5-10, and 140 IAC 7-5-11. The proposed amendments to 140 IAC 7-5 maintains compliance with the implementation of the Entry-Level Driver Training under 49 CFR § 380, Subparts F and G, which went into effect on February 7, 2022.

**c. Statement of Need**

This rule addresses a change to the Indiana Code which allows a driver training school to administer a driving skills test to an individual who holds a valid learner’s permit consistent with the passage of HEA 1050-2023 and the addition of Ind. Code § 9-24-10-4.5.

Additionally, the proposed amendments make technical corrections and updates to maintain compliance federal regulations. Specifically, the proposed amendment to 140 IAC 7-3-6.5 removes the requirement that a CLP or CDP applicant carry a medical examiner’s certificate on his or her person, which was inconsistent with 49 CFR § 391, Subpart E.

The amendments to 140 IAC 7-5 are consistent with the implementation of the Entry-Level Driver Training under 49 CFR § 380, Subparts F and G, which went into effect on February 7, 2022, and establishes the training requirements for entry-level drivers of commercial motor vehicles and the eligibility requirements for entry-level driver training providers.

**d. Statutory Authority for the Proposed Rule**

Pursuant to Ind. Code § 9-14-8-3, the Indiana Bureau of Motor Vehicles (BMV) is granted statutory authority to adopt and enforce administrative rules that are necessary to carry out Title 9.

Ind. Code § 8-2.1-24-18 incorporates the federal motor carrier safety regulations into Indiana law, specifically 49 CFR Parts 40, 375, 380, 382 through 387, 390 through 393, and 395 through 398. In addition, Ind. Code § 9-24-6.1-2 requires the BMV to develop and implement a commercial driver’s license program which must include procedures required to comply with 49 CFR Parts 383 through 399. Pursuant to Ind. Code § 9-14-8-3, the BMV is granted statutory authority to adopt and enforce administrative rules that are necessary to carry out Title 9.

**e. Fees, Fines, and Civil Penalties**

These Proposed Rules do not add or increase any fees, fines, or civil penalties.

**II. Fiscal Impact Analysis**

**a. Anticipated Effective Date of the Rule**

November 29, 2023

**b. Estimated Fiscal Impact on State and Local Government**

There are no costs of implementation or enforcement for these proposed rules.

**c. Sources of Expenditures or Revenues Affected by the Rule**

This rule does not impact expenditures and revenues of State agencies or local government.

### **III. Impacted Parties**

The BMV estimates that 214 small businesses and roughly 200,000 CDL or CLP holders will be impacted by these proposed rules.

### **IV. Changes in Proposed Rule**

The changes in the Proposed Rule are summarized below. A redline draft of the Proposed Rule is contained below in Section X.

The proposed amendment to 140 IAC 4-4-9(a)(2) removes the requirement that an individual be age eligible to apply for a driver's license before a driving training school may administer a driving skills test, which is consistent with Ind. Code § 9-24-10-4.5 and the passage of HEA 1050.

The proposed amendment to 140 IAC 7-3-6.5 strikes provisions in subsections (a) which requires a CLP or CDL applicant to carry a medical examiner's certification on their person. This provision is inconsistent with 49 CFR § 391, Subpart E. Specifically, 49 CFR § 391.41(a)(2) no longer requires a driver who previously submitted a current medical examiner's certificate to carry the medical examiner's certificate on his or her person.

The proposed amendment adding 140 IAC 7-5-0.5 as a new section approves a business enterprise that educates, trains, or otherwise prepares a person to operate a commercial motor vehicle to operate in the state if the business enterprise is listed on the Training Provider Registry as described in 49 CFR § 380, Subpart G. This amendment is consistent with the implementation of the Entry-Level Driver Training under 49 CFR § 380, Subparts F and G, which went into effect on February 7, 2022.

The proposed amendment to repeal 140 IAC 7-5-1, 140 IAC 7-5-2, 140 IAC 7-5-3, 140 IAC 7-5-4, 140 IAC 7-5-5, 140 IAC 7-5-6, 140 IAC 7-5-7, 140 IAC 7-5-8, 140 IAC 7-5-9, 140 IAC 7-5-10, and 140 IAC 7-5-11 maintains compliance with the implementation of the Entry-Level Driver Training under 49 CFR § 380, Subparts F and G, which went into effect on February 7, 2022.

### **V. Benefit Analysis**

The proposed amendment to 140 IAC 4-4-9 benefits both driver training schools and individuals holding a valid learner's permit but are not age eligible for a license. The proposed amendment allows driver training schools to offer to administer driving skills tests to individuals holding a valid learner's permit who are not age eligible for a license, which is consistent with HEA 1050 and the addition of Ind. Code § 9-24-10-4.5.

The proposed amendment to 140 IAC 7-3-6.5 benefits CLP or CDL applicants who previously submitted a current medical examiner's certificate by removing requirements which are more restrictive than federal regulations. Specifically, the proposed amendment would no longer require a CLP or CDL applicant who previously submitted a current medical examiner's certificate on his or her person, consistent with 49 CFR § 391.41(a)(2).

The proposed amendments to 140 IAC 7-5 benefits both entry level drivers of commercial vehicles and entry level driver training providers by maintaining compliance with the implementation of the Entry-Level Driver Training under 49 CFR § 380, Subparts F and G, which went into effect on February 7, 2022.

## **VI. Cost Analysis**

### **a. Estimate of Compliance Costs for Regulated Entities**

The proposed rules do not impose additional compliance costs or requirements on regulated entities.

### **b. Estimate of Administrative Expenses Imposed by the Rules**

The proposed rules do not impose administrative expenses on regulated parties and removes provisions which are either inconsistent with or more restrictive than federal regulations.

### **c. The fees, fines, and civil penalties analysis required by IC 4-22-2-19.6**

The proposed rule does not add or increase a fee, fine, or civil penalty.

## **VII. Sources of Information**

In making the above determinations, the BMV consulted with various lines of business within the agency to ascertain the number of driver training schools and CDL holders which could be impacted by this rule.

## **VIII. Regulatory Analysis**

This rulemaking benefits regulated parties by maintaining compliance with federal regulations and changes to the Indiana Code because of HEA 1050. The proposed rules do not impose additional compliance costs, requirements, or administrative expenses on regulated industries. Additionally, there are no costs of implementation or enforcement imposed on State and local governments as a result of these proposed rules. Therefore, the benefits of this rulemaking exceed the costs.

### **Additional Information for OMB and SBA Review**

## **IX. Contact Information of Staff to Answer Substantive Questions**

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## **X. Redline Draft of Proposed Rules**

The proposed changes are bolded and redacted below:

SECTION 1. 140 IAC 4-4-9 IS AMENDED TO READ AS FOLLOWS:

140 IAC 4-4-9 Driving skills test administration

Authority: IC 9-14-8-3; IC 9-24-10-4

Affected: IC 9-24-10-4; IC 9-24-10-4.5; IC 9-27-6-6; IC 9-27-6-11

Sec. 9. (a) A school that participates in the driving skills test program may offer to administer a driving skills test to individuals that ~~meet the following requirements:~~

- ~~(1) Hold a valid Indiana learner's permit.~~
- ~~(2) Are age eligible to apply for the driver's license.~~

(b) All schools that participate in the driving skills test program shall use the driving skills test score sheet prescribed by the bureau to evaluate and score the driving skills test.

(c) The signatures of:

- (1) the instructor who administered the driving skills test; or
- (2) the school official;

must appear on the driving skills test score sheet for it to be valid. The instructor who conducted the driving skills test or the school official shall note on the score sheet whether the student passed or failed the test.

(d) A person's driving skills test pass result is valid for the duration of the permit held at the time of test administration but cannot exceed two (2) years.

(e) Every school shall retain score sheets at the school's location for at least two (2) years and shall present the score sheets to the bureau upon request.

(f) Individuals shall take the driving skills test independently except as otherwise required by law and without assistance from the instructor.

(g) The driving skills test cannot be conducted during the behind-the-wheel training nor on the same day as the behind-the wheel training.

(h) The school must comply with the following requirements to administer the driving skills test:

(1) The driving skills test must be administered by a bureau-approved driver training school instructor for skills test administration.

(2) The applicant must pay the applicable fees established by the driver education school for each driving skills test administered to the approved test site operator that administers the driving skills test.

(3) Every applicant, prior to taking the driving skills test, will be required to sign a waiver of liability. The waiver must include a statement that the applicant will hold the bureau and the state harmless for any injury sustained from any accident during the driving skills test.

(i) Skills test results must be submitted to the bureau in an electronic form.

*(Bureau of Motor Vehicles; 140 IAC 4-4-9; filed Nov 12, 1998, 3:00 p.m.: 22 IR 971; readopted filed Nov 16, 2004, 12:25 p.m.: 28 IR 1315; readopted filed Nov 14, 2007, 1:31 p.m.: 20071212-IR-140070562RFA; filed Oct 7, 2008, 10:23 a.m.: 20081105-IR-140080215FRA; readopted filed Nov 3, 2014, 1:43 p.m.: 20141203-IR-140140375RFA; filed Nov 25, 2014, 3:50 p.m.: 20141224-IR-140140292FRA; filed Dec 14, 2017, 1:17 p.m.: 20180110-IR-140170394FRA; filed Feb 9, 2022, 3:34 p.m.: 20220309-IR-140210460FRA)*

## SECTION 2. 140 IAC 7-3-6.5 IS AMENDED TO READ AS FOLLOWS:

### 140 IAC 7-3-6.5 Physical examination requirements

Authority: IC 9-14-8-3; IC 9-24-6.1-2

Affected: IC 8-2.1-24-18; IC 9-24-6.1

Sec. 6.5. (a) Every **CLP or CDL holder-applicant** must obtain ~~and have in the person's possession~~ a medical examiner's certification that the **CLP or CDL holder** is qualified to operate a CMV either interstate or intrastate.

(b) The medical examination shall be performed by a licensed medical examiner pursuant to 49 CFR 391, Subpart E\*.

(c) For intrastate operation, the medical examiner may recommend the issuance of an intrastate CDL subject to the following restrictions:

(1) Diabetes: for persons with diabetes mellitus requiring insulin treatment, the medical examiner may recommend restrictions consistent with the requirements of IC 8-2.1-24-18. The Medical Examination Report must indicate that the applicant's diabetic condition is controlled such that the applicant is not likely to lose consciousness or any loss of ability to properly control a CMV.

(2) Neurological conditions: for persons with medical history or clinical diagnosis of epilepsy, seizure disorder, or other neurological condition, the medical examiner shall state his or her opinion whether such conditions disqualify a driver from unrestricted interstate operation pursuant to 49 CFR 391.43\*. If they do, the medical examiner may consider whether under specific restrictions the driver may be qualified for intrastate operation of a CMV. The medical examiner may find the driver qualified for intrastate operation subject to medical restrictions only if the examiner recommends that under the specified restrictions the condition is not likely to cause loss of consciousness or any loss of ability to control a commercial motor vehicle. In addition, the driver must be seizure/epilepsy free for at least one (1) year from the last occurrence before intrastate certification is considered. In that event, the medical examiner shall specify such medical restrictions on the physical examination form accompanying the intrastate certification, or on an attached separate sheet of paper. If the driver is disqualified from interstate operation and the medical examiner does not recommend specific restrictions that may permit qualification for intrastate operation, the examination report will be construed as a recommendation that the driver is not qualified to operate CMVs

(3) Notwithstanding the provisions set forth in subdivision (1) or (2), the medical examiner shall not certify a driver who fails to meet any of the other standards set forth in 49 CFR 391.43\*, except that a physician may certify and recommend that the bureau qualify such a person for intrastate operation under specific medical restrictions or instructions.

(d) The expiration date for the Medical Examination Report and the Medical Examiner's Certificate must be not more than twenty-four (24) months from the date of the report and certification in the case an applicant who is medically qualified for an interstate CDL, and not more than twelve (12) months from the date of the report and certification in the case of an applicant who is medically qualified for an intrastate CDL. The expiration date may be an earlier date than the expiration of the twelve (12) or twenty-four (24) month periods if, in the medical examiner's opinion, the interests of public highway safety or the health of the driver requires an earlier follow-up examination.

(e) The driver shall submit a copy of the Medical Examination Report and Medical Examiner's Certificate to the bureau and upon its expiration shall submit a new ~~Medical Examination Report and~~ Medical Examiner's Certificate. The bureau shall disqualify a driver who does not maintain on file a current valid Medical Examination Report and Medical Examiner's Certificate, except that the bureau may, in its discretion, allow one (1) period of not more than thirty (30) days after a valid Medical Examination Report and Medical Examiner's Certificate has expired before issuing such disqualification.

(f) A person who does not meet the requirements of 49 CFR391\* or of this section shall be disqualified from operating a CMV. In determining whether a person meets those requirements, the bureau may require the person to provide any additional information or documentation that the bureau reasonably deems necessary to make such a determination. In making such determination, the bureau may also request and consider the advisory opinion of the Indiana driver's license medical advisory board, the Federal Motor Carrier Safety

Administration's regulations, instructions to medical examiners, conference reports on commercial driving and medical conditions, and any other relevant medical reference sources and advice.

(g) The bureau shall not issue a passenger endorsement, a school bus endorsement, or a hazardous materials endorsement to a person with an intrastate restricted CDL.

\*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Bureau of Motor Vehicles, Indiana Government Center North, Fourth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Bureau of Motor Vehicles; 140 IAC 7-3-6.5; filed Oct 7, 2008, 10:23 a.m.: 20081105-IR-140080215FRA; readopted filed Nov 3, 2014, 1:43 p.m.: 20141203IR-140140375RFA; readopted filed Sep 3, 2020, 10:16 a.m.: 20200930-IR-140200090RFA*)

SECTION 3. 140 IAC 7-5-0.5 IS ADDED TO READ AS FOLLOWS:

140 IAC 7-5-0.5 Truck driver training school approval

Authority: IC 9-24-6.1-2

Affected: IC 9-27-6-3; IC 22-4.1-21-9

**Sec. 0.5. A business enterprise that educates, trains, or otherwise prepares a person to operate a commercial motor vehicle is approved by the bureau to operate in the state if the business enterprise is listed on the Training Provider Registry as described in 49 C.F.R. Part 380.**

SECTION 4. THE FOLLOWING ARE REPEALED: 140 IAC 7-5-1; 140 IAC 7-5-2; 140 IAC 7-5-3; 140 IAC 7-5-4; 140 IAC 7-5-5; 140 IAC 7-5-6; 140 IAC 7-5-7; 140 IAC 7-5-8; 140 IAC 7-5-9; 140 IAC 7-5-10; AND 140 IAC 7-5-11.