

TITLE 140 BUREAU OF MOTOR VEHICLES

Notice of First Public Comment Period

LSA Document #23-734

PURPOSE OF NOTICE

The Bureau of Motor Vehicles (BMV) is soliciting public comment on amendments to rules at 140 IAC 4-4-9 concerning driving skills test administration; 140 IAC 7-3-6.5 and 140 IAC 7-5 concerning driver training schools and other commercial driver's licensing matters. The BMV seeks comment on the affected citations listed and any other provisions of Title 140 that may be affected by this rulemaking.

CITATIONS AFFECTED: 140 IAC 4-4-9; 140 IAC 7-3-6.5; 140 IAC 7-5-0.5; 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; 140 IAC 7-5-11.

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

OVERVIEW

Basic Purpose and Background

The proposed amendment to 140 IAC 4-4-9 removes the requirement that an individual be age eligible to apply for a driver's license before driving training school may offer to administer a driving skills test. The proposed amendment to 140 IAC 4-4-9 is consistent with Ind. Code § 9-24-10-4.5, which was added by HEA 1050-2023, and allows a driver training school to administer a driving skills test to an individual who holds a valid learner's permit.

The proposed amendment to 140 IAC 7-3-6.5 removes the requirement that a CLP or CDL applicant must carry a medical examiner's certificate on his or her person. The proposed amendment to 140 IAC 7-3-6.5 maintains compliance with federal regulations; specifically, 49 CFR § 391, Subpart E.

The proposed amendments to 140 IAC 7-5 adds 140 IAC 7-5-0.5 and repeals 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; 140 IAC 7-5-11 concerning the approval of truck driver training schools. The proposed amendments bring Title 140 into conformity with the implementation of the Entry-Level Driver Training under 49 CFR § 380, Subparts F and G, which went into effect February 7, 2022.

For purposes of IC 4-22-2-28.1, small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Kevin Kolbus, Small Business Regulatory Coordinator
Bureau of Motor Vehicles
Indiana Government Center North
100 North Senate Avenue, Room N404
Indianapolis, Indiana 46204
(317) 234-3615

kkolbus@bmv.in.gov

For purposes of IC 4-22-2-28.1, the Small Business Ombudsman designated by IC 5-28-17-6 is:

Matthew Jaworowski
Small Business Ombudsman
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, Indiana 46204
(317) 650-0126
majaworowski@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in IC 5-28-17-6, specifically IC 5-28-17-6(9), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

REQUEST FOR PUBLIC COMMENTS

At this time, the BMV is soliciting public comments on the proposed rule.

Comments may be submitted in one of the following ways:

(1) By mail or common carrier to the following address:

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Kevin Kolbus
Indiana Government Center North
100 North Senate Avenue, Room N404
Indianapolis, Indiana 46204

(2) By electronic mail to BMVLegal@bmv.in.gov.

To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will not be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

(3) Attend scheduled Public Hearing.

The public may attend and comment on the public hearing remotely. For more information, including links to the public hearing, please visit www.in.gov/bmv/resources/legal/rulemaking-docket/.

COMMENT PERIOD DEADLINE

All comments must be postmarked or time stamped not later than [*publication date plus 30 days*] **December 8, 2023**.

The rule, regulatory analysis, data, studies, or analyses referenced in the regulatory analysis, and materials incorporated by reference (if applicable) are on file at the Indiana Bureau of Motor Vehicles, Indiana Government Center North, 200 North Senate Avenue, Room N404,

Indianapolis, Indiana, 46204 and are available for public inspection. Copies of the rule, regulatory analysis, and data, studies, or analyses referenced in the regulatory analysis are available at the office of the Bureau of Motor Vehicles.

If the Indiana Bureau of Motor Vehicles does not receive substantive comments during the public comment period or public hearing, the rule may be adopted with text that is the same as or does not substantially differ from the text of the proposed rule published in this notice.

ADDITIONAL DOCUMENTS

Regulatory Analysis *[publisher will add link to document]*

Notice of Public Hearing [publisher will add link to list of related documents on Register website.]

PROPOSED RULE

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.