

## **Agency Response to Public Comments on LSA #24-214**

The Bureau of Motor Vehicles received public comments on the proposed rules for LSA Document #24-214 via written submissions and the public hearing held on August 2, 2024. The following is a summary of topics raised by members of the public and the agency's response to those comments:

### Comment 1

Indiana Disability Rights (IDR) submitted a written comment electronically. IDR expressed concern to the proposed amendment to 140 IAC 4-4-11(a)(21), which specifies the actions which, upon eleven (11) or more occurrences, would result in a failure of the driving skills test. IDR raises concern that the proposed amendments would jeopardize the ability of individuals with disabilities to obtain a driver's license because it fails to explicitly allow for reasonable accommodations for drivers with disabilities. Specifically, IDR points to 140 IAC 4-4-11(a)(21)(C), which identifies the failure to keep both hands on the steering wheel as one of eleven actions which can result in the failure of a driving skills test. IDR expressed concern that such a requirement could jeopardize the ability of people either without two hands or the ability to use both hands to obtain a driver's license.

### BMV Response to Comment 1

Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990 ("ADA") prohibit discrimination on the basis of disability in services, programs, and activities provided by the State. The Indiana BMV is committed to delivering the same measure of service to all customers. It is the policy of the BMV that all customers, regardless of ability, are served in a fair and respectful manner, and that reasonable accommodations shall be made for all people with special needs. This policy is designed to ensure compliance with the ADA requirement that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such agency."

This proposed rule does not override the BMV's obligations under the ADA, and the BMV will continue to make reasonable accommodations to individuals with disabilities. Thus, the BMV does not agree that the proposed rules would jeopardize the ability for persons with disabilities to receive a driver's license, nor that a revision of language is warranted. The BMV remains committed to delivering the same measure of service to all customers and continuing to maintain compliance with the ADA in making reasonable accommodations for all customers with special needs.

### Comment 2

Bart Giesler submitted a written comment on behalf of the Indiana Towing and Wrecker Association (ITWA), Indiana Constructors Inc. (ICI), American Council of Engineering Companies of Indiana (ACED), and Indiana Broadband and Technology Association (IBTA) proposing that amendments to 140 IAC 4-4-11 also include violation of the Indiana Move Over Law (IC 9-21-8-35) as an action which results in automatic failure of the driving skills test. Mr. Giesler cites the AAA Foundation for Traffic Safety's report *American Drivers' Self-Reported Perceptions and Attitudes Regarding Move Over Laws* (Sep. 2021) which shows that – of the almost 3,000 drivers surveyed – "the 16-18 age group slowed down 85.39% of the time compared to the overall rate of 92.61%." Mr. Giesler further stated that, according to the report, drivers in the 19-24 age group also slowed down less frequently – 90.04% of the time – than the overall rate of 92.61%. Mr. Giesler believes that including the failure to abide by the Move Over Law in the automatic failure criteria will create greater public awareness and increase roadside safety.

In addition, Mr. Giesler, on behalf of ITWA, ICI, ACEC, and IBTA would like the BMV to consider adding a test question to the written exam regarding the Move Over Law.

#### BMV Response to Comment 2

The BMV agrees with the submitted comment in that expanding the language contained within 140 IAC 4-4-11(a)(15) to also include recovery, utility, maintenance, or other vehicles described in IC 9-21-8-35(c). As currently written, 140 IAC 4-4-11(a)(15) effectively establishes that the violation of IC 9-21-8-35(a) and (b) results in the automatic failure of a driving skills test, which requires drivers to pull over and/or stop for approaching and/or stationary emergency vehicles.

The BMV agrees that expanding the language contained within 140 IAC 4-4-11(a)(15) to include vehicles described in IC 9-21-8-35(c) increase public awareness and enhance roadway safety.

#### Comment 3

Jarred Meeks with State Affairs contacted the BMV commenting that he saw the proposed amendments regarding the driving skills test, which identifies things that will immediately fail someone on a driving skills test. Mr. Meeks asked what the motivation was behind the change?

#### BMV Response to Comment 3

The proposal to amend the driver's skills exam is not an official call to change. It is putting the existing practice into an administrative rule. The BMV determined that its current practices related to the administration of the driver's skills exam should be codified. At this time, no changes have been made to legislation regarding BMV driver's exams.

Specifically, Ind. Code § 9-24-10-5 provides that "[t]he bureau shall make . . . the rules and requirements that must be uniformly and impartially followed in making the examinations." While 140 IAC 4-4-11 provides actions which result in automatic failure of the driving skills test, there are many other actions a person can do to demonstrate they are not safe to operate a motor vehicle. While these actions don't rise to the level of an automatic failure, the accumulation of eleven (11) or more unsafe actions does result in the failure of a driving skills test.

Historically, the BMV has interpreted these actions as "requirements" as used in Ind. Code § 9-24-10-5, and listed them in the BMV policies, manuals, and the State Forms that are the driving skills test score sheet. However, with changes to the Indiana Code over the past few years requiring every agency action to be included in rule or statute, the BMV recognized the need to place additional pass/fail criteria for the driving skills test to maintain compliance with Indiana law and particularly the enactment of HEA 1623-2023.

#### Comment 4

A written public comment was received via email from a parent stating that his child is 15 years old and has completed driver's education, the necessary behind the wheel hours, and driving skills test. The commenter expressed concern in the proposed rules as he wants to ensure that students who have already paid for and passed the driving skills test are not required to take the test again upon adoption of the proposed rules.

#### BMV Response to Comment 4

The proposed rules under LSA #24-214 do not substantively change the administration of driving skills tests; rather, it ensures the bureau's internal policies and "requirements" are properly contained in rule or law, consistent with the passage of HEA 1623-2023. These proposed rules do not substantively change the administration of driving skills tests, and would not require additional education, training, or testing for applicants.

#### Comment 5

A written public comment was received via email asking what the reasoning was behind the proposed rule changes to 140 IAC 4-4-11, particularly referencing the automatic failure criteria.

#### BMV Response to Comment 5

The proposed amendment to 140 IAC 4-4-11(a) adds two additional actions which result in the automatic failure of a driving skills test – failing to stop at a stop sign completely and passing a school bus with the stop arm out. These two actions, in addition to the other eighteen (18) actions listed in 140 IAC 4-4-11, have always resulted in the automatic failure of a driving skills test, and the proposed amendment to 140 IAC 4-4-11(a) clarifies those requirements. As discussed above, the reasoning behind these proposed rules is to maintain compliance with HEA 1623-2023 by ensuring the bureau's internal policies concerning driving skills test administration are properly contained in either rule or law.