



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

MEMORANDUM

TO: Joe Kirk, Ohio Department of Public Safety

FROM: Sean McCullough, Director

DATE: December 6, 2021

RE: **CSI Review – Commercial Driver Training Schools (OAC 4501-7-01, 4501-7-02, 4501-7-03, 4501-7-04, 4501-7-05, 4501-7-06, 4501-7-07, 4501-7-08, 4501-7-09, 4501-7-10, 4501-7-11, 4501-7-12, 4501-7-13, 4501-7-14, 4501-7-16, 4501-7-17, 4501-7-18, 4501-7-19, 4501-7-20, 4501-7-21, 4501-7-22, 4501-7-23, 4501-7-24, 4501-7-25, 4501-7-26, 4501-7-27, 4501-7-28, 4501-7-29, 4501-7-30, 4501-7-31, 4501-7-32, 4501-7-33, 4501-7-34, 4501-7-35, 4501-7-36, 4501-7-37, 4501-7-38, and 4501-7-39)**

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) office under Ohio Revised Code (ORC) section 107.54, the CSI office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI office's comments to the Agency as provided for in ORC 107.54.

Analysis

This rule package contains two new, 23 amended, and 15 rescinded rules submitted by the Ohio Department of Public Safety (Department) as part of the statutorily required five-year review process. The package was originally submitted to CSI on February 22, 2021, and the public comment period was held open through March 9, 2021. The Department resubmitted the package with updated rules to CSI on September 15, 2021, and the public comment period was held open through September 29, 2021. The Department responded to comments received during the second comment period, including additional rule updates, on October 25, 2021. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI office on October 25, 2021.

The rules establish driver training school and instruction requirements for Class D and commercial

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driver licenses (CDL). Amendments are proposed to reorganize and consolidate rules. To comply with new federal CDL requirements, updates are proposed for theory and behind-the-wheel curriculum, driving range specifications are outlined, and new assessments are required following the completion of theory and behind-the-wheel instruction. Other changes include a requirement for all driving instructors and training managers to get a physical exam every two years. All driver training schools may provide instruction virtually. Additional amendments remove a prohibition on certificates being sent electronically and allow license application fees to be paid electronically, which was a change made as a result of research conducted for the CSI regulatory reform project using an artificial intelligence software tool. The Department stated in response to questions from CSI that most applications may be submitted electronically, except for online programs. A new rule defines offenses that would disqualify an individual from licensure per statutory requirements implemented by Substitute House Bill 263 (133rd General Assembly).

As part of the initial early stakeholder outreach conducted by the Department, feedback was solicited via email and through multiple meetings with driver training schools. Some suggestions that did not result in changes to the rules included removing the CDL requirement for CDL school training managers, allowing Ohio Department of Transportation inspections to satisfy vehicle inspection requirements, modifying the hours of training for an instructor, and changing renewal to every two years. Many of the suggested changes could not be made because they are statutory requirements and other provisions were justified by the Department as safety issues.

Several stakeholder suggestions did lead to rule updates, including changing physicals to every two years instead of annually, modifying the assessment requirement for probationary instructors, and permitting certificates to be sent electronically to students. Additionally, in response to suggestions, the Department stated that it is continuing to work on instructor training requirements, splitting instructor licenses, student training requirements, and allowing certificates to be electronically submitted to the Department.

Six comments were received during the initial CSI public comment period. Several stated concerns regarding the virtual driving assessments (VDAs). In response, the Department explained the research that shows the benefit of using a VDA, but ultimately removed the mandate in the rules resubmitted to CSI on September 15, 2021, because after considering feedback from training programs it determined that the implementation of the mandatory assessment is logistically difficult and cost prohibitive for some at this time as schools are recovering from changes during the pandemic and experiencing personnel shortages. The Department stated in the revised BIA that it will work with a pilot school to implement the assessment and reevaluate next year.

Additional amendments were made as a result of Amended Substitute House Bill 74 (134th General

Assembly), including requiring completion of classroom training before a student may begin behind-the-wheel training. Also, the originally proposed rules included language allowing students to complete classroom and behind-the-wheel training at two different schools. This was piloted during the COVID-19 pandemic; however, it resulted in a backlog of students needing behind-the-wheel training and extended the time necessary to complete training. While these changes are now removed from the proposed rules, the Department plans to revisit the concept with schools in the future.

Other comments received from the Ohio Trucking Association (OTA) and 160 Driving Academy expressed concerns about pending federal rules that may affect the proposed changes, CDL school range requirements, training manager certification, instructor probationary periods, and investigations. Concerns focused heavily on the instructor-to-student and truck ratio requirements in 4501-7-28 (K). As first proposed by the Department, a CDL school would have needed to ensure that there was a minimum of one instructor for every three vehicles and no more than six students during range instruction (down from current standards of ten students and five trucks per instructor). After discussing the topic with stakeholders, the Department amended the rules on September 15, 2021, requiring a minimum of one instructor for every four vehicles with a maximum of eight students per instructor.

Additionally, after discussions with stakeholders, the Department amended OAC 4501-7-05 (D)(7)(c) to accept licensure and training conducted in another state with which Ohio has reciprocity for a CDL instructor application.

Four comments were received during the second CSI public comment period. One stakeholder made suggestions regarding Class D instructor licensing and training, however the Department noted that the rules as drafted maintain safety and the integrity of driver training programs. Another stakeholder shared concerns about restricted instructor requirements, probationary periods for instructors, proficiency demonstrations, and safety belts. In response, the Department clarified the intention of the rules and that some of the provisions are statutorily required. The stakeholder also suggested that motor vehicle inspections regarding range-only vehicles should be clarified in OAC 4501-7-31, to which the Department agreed and modified the rule.

Comments were also submitted on behalf of the Commercial Vehicle Training Association regarding the instructor-to-student and truck ratio requirements, pre-trip inspections, proficiency demonstrations, and the final exam. In response, the Department provided helpful information and explained where it intends to clarify the rules regarding ratios.

Lastly, OTA submitted comments again reiterating concerns that the ratio requirements in OAC 4501-7-28 (K) lack clarity and could be interpreted to mean that schools must maintain an unmanageable number of trucks and instructors. OTA also posed questions regarding the status of OAC 4501-7-07 and concerns with its rescission, as well as that of OAC 4501-7-26.

The Department modified the rules to a ratio of instructor to vehicles (one to four), and maximum amount of student to instructor per class (one to eight) to the satisfaction of the commentors.

The rules impact 264 licensed driver training enterprises and about 2,100 licensed instructors and training managers. Adverse impacts of the rule updates identified by the Department include increased hours of training for new employees, reporting of assessments, and complying with requirements for those who choose to provide online or virtual instruction. The rules also require licenses for the schools as well as instructors and training managers. The average monthly lease cost for a school, office, and range is \$1,281 per location, and the Department believes that a school implementing virtual classrooms could save \$800-\$1,000 per location. The Department also noted that a physical exam costs about \$80 every two years, which is reduced from an annual requirement. The driver training enterprise application costs \$250 per location, \$50 per annual renewal, between \$30-\$80 per authorizing official and owner for a background check, and there may be a cost associated with new school orientation. An online provider has an additional cost of \$600 for a security assessment and online driver training program review. The total cost for an initial instructor's license is between \$418-\$782, with an \$18.50 annual renewal. Training managers must take an additional course costing \$600 and must complete a continuing education course every three years at a cost of \$90. Schools must also maintain vehicle insurance and a bond or escrow sufficient to cover the cost of reimbursing students for training not supplied. Training vehicles are required to have a "student driver" sticker, which costs \$50, and an instructor brake, which ranges from \$500-\$1,000 per vehicle. The rules also require CDL schools to provide certain documentation for inspections, which may take between four to eight hours to prepare.

The Department asserted that it must ensure the protection of the public by setting appropriate instructor and driver training course requirements, and that the rules balance the needs of communities and safety with statutory mandates.

Recommendations

For the reasons described above, the CSI office has no recommendations on this rule package.

Conclusion

Based on its review of the proposed rule package, the CSI office recommends that the Department of Public Safety proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.