

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Public Safety

Regulation/Package Title: Commercial Driver's License

Rule Number(s): 4501-47-01, 4501-47-02, 4501-47-03, 4501-47-04, 4501-47-05, 4501-47-06, 4501-47-07, 4501-47-08, 4501-47-09, 4501-47-10, 4501-47-11, 4501-47-12, 4501-47-13, 4501-47-14, 4501-47-15, and 4501-47-16

Date: March 16, 2015

Rule Type:

- New
- Amended

- 5-Year Review
- Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

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Chapter 4501-47 of the Administrative Code governs commercial driver's licenses (CDLs), waivers of CDL skills tests, third-party CDL examiners, qualifications for third-party testers, requirements for third-party testing facilities, administration of CDL skills tests, advertising by third-party testers, record keeping for third-party testers, requirement for good character and reputation, fees to be charged, termination of third-party testing agreements, insurance and bond requirements, investigation provisions, termination of third-party examiner credentials, third-party testing by the department of education, and waiver of CDL skills tests for qualified military personnel.

Chapter 4501-47 is being filed following a completed periodic rule review in accordance with section 106.03 of the Revised Code. Rules 4501-47-01, 4501-47-03, 4501-47-04, 4501-47-05, 4501-47-06, 4501-47-08, 4501-47-11, 4501-47-12, 4501-47-13, 4501-47-14, 4501-47-15, and 4501-47-16 are proposed for amendment to update references to the materials incorporated by reference, reassign some responsibilities to certain divisions of the Department of Public Safety, delete obsolete provisions, update record keeping requirements, amend disqualifying criminal convictions to comply with Ohio statutes and federal regulations, specify the bond requirement, amend the list of persons eligible for a military waiver of the CDL skills test, and make other non-substantive changes. Rule 4501-47-02 is proposed for rescission as it contains obsolete provisions that were applicable only when the CDL testing program was first implemented. Finally, rules 4501-47-07, 4501-47-09, and 4501-47-10 are proposed without change, as the BMV has determined the rules remain necessary, but revisions are not needed at this time.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

R.C. 4506.09

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program? If yes, please briefly explain the source and substance of the federal requirement.

Yes; the Code of Federal Regulations (C.F.R.) at 49 C.F.R. 383 governs the requirements states must impose for the regulation and testing of commercial drivers and the issuance of CDLs.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

In addition to the federal requirements, the regulations include requirements set forth in the Revised Code and the practical considerations necessary to implement and administer the federal regulations and the Ohio statutory requirements.

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5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

This is a major public safety issue to assure that drivers operating commercial motor vehicles weighing up to 80,000 pounds and sometimes transporting hazardous materials are properly trained and tested before driving on streets and highways. The regulations also ensure compliance with federal testing requirements.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The Ohio Department of Public Safety (ODPS) monitors traffic convictions; traffic crashes (accidents), traffic injuries, and traffic deaths on a constant basis for commercial drivers covered by these regulations. In 2013, Ohio experienced the safest year since traffic statistics were first recorded. Trained department of public safety (DPS) employees conduct annual “ride alongs” with each examiner to ensure that testing is consistent with federal safety guidelines. DPS also conducts annual administrative inspections.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

All of the current third-party CDL testers were invited to a meeting on October 23, 2014, in Piketon, Ohio in conjunction with a CDL examiners training session. They were given copies of the agency’s proposed five-year rule review with amendments proposed by ODPS. ODPS explained the current rules and the proposed amendments, facilitated a discussion, conducted a question and answer session, and received comments. The stakeholders expressed support for the rules and amendments. The stakeholders were encouraged to continue to review the rules and amendments and to submit any comments, questions, or objections to ODPS. ODPS has not received any objections or negative comments. ODPS has sent a reminder email to elicit any responses and comments (none have yet been received).

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

As noted in answer to question 7, above, the stakeholders participated in a full discussion of the proposed rules and amendments and concurred without any objections or request for revisions.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

These regulations are not susceptible to scientific data.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

None; Ohio Revised Code provisions and Code of Federal Regulations (C.F.R.) are specific in what is required; they do not accommodate alternative regulations.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

ODPS determined that there is no practical way to implement performance-based regulation for these regulations.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

ODPS has exclusive jurisdiction over CDL testing and reviewed its own regulations to ensure that there are no duplicative regulations.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The current regulations are already in place and the proposed amendments will be integrated into the current process and administration and during a recertification class conducted by ODPS in the fall of each year and will continue to be consistently and predictably applied by ODPS staff to the entire regulated community.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

- a. Identify the scope of the impacted business community;
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and
- c. Quantify the expected adverse impact from the regulation.
The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a

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“representative business.” Please include the source for your information/estimated impact.

The impacted business community consists of third-party CDL test facilities (currently 12 facilities) and their CDL examiner employees.

Adverse impact may include: under rule -03, before becoming a third-party examiner (examiner) an applicant must have five years CDL experience, must successfully complete an examiner training program approved by ODPS and submit a certificate of completion (training is provided by ODPS at no charge, but applicants are charged a fee of approximately \$1,800 by the facility where the training is held for classroom space and the use commercial motor vehicles for training and testing purposes), must submit a criminal background report (“WebCheck” \$35-\$75), must submit a US DOT physical examination report, must provide a Bureau of Motor Vehicles (BMV) abstract demonstrating an acceptable driving record (BMV abstract \$5.00), must maintain a valid CDL with appropriate endorsements, must submit an application (3 pages with 1 page instructions), must submit two photographs of the applicant, must supply a photocopy of applicant’s CDL. Rule -03 also requires an examiner to report certain infractions and subjects the examiner to suspension or denial for serious infractions. Rule -04 requires an application and sets qualifications for obtaining third-party tester approval and specifies grounds for denial. Rule -05 sets standards for third party tester facilities. Rule -06 sets forth standards for the administration of CDL skills testing. Rule -07 sets limitations on advertising. Rule -08 outlines record keeping standards. Rule -09 details matters relating to criminal convictions and matters of good character. Rule -10 governs allowable fees to be charged by third-part testers. Rule-11 lists grounds for termination of the third-party tester agreement. Rule 12 specifies insurance and bond requirements; the bond amount is reduced to \$20,000 (one stakeholder commented that this reduced limit will save him over \$9,000 per year). Rule -13 provides for inspections or investigations by ODPS and the state highway patrol. Rule -14 covers termination of third-party examiner certification. Rule-15 has no adverse impact because the Department of Public Safety and the Department of Education no longer maintain any agreement for CDL skills testing. Rule -16 has no adverse impact because it waives skills testing for military personnel who obtained their CDL training and experience while in the military.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

All of the regulations implement provisions mandated by Ohio statutes or federal regulations, or both. ODPS has been careful to not increase or go beyond those state and federal mandates.

Regulatory Flexibility

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16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

No; as stated above ODPS has been careful to not increase or go beyond the state and federal mandated standards. It is mandatory to apply these reasonable regulations evenly across-the-board without exceptions or special treatment.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

These regulations do not include any provisions for fines or penalties for paperwork violations. Incomplete paperwork is returned with instructions on how to reapply without any penalty. Rule 4501-47-11 allows the third-party tester or examiner up to thirty days to correct any deficiencies without any penalty.

18. What resources are available to assist small businesses with compliance of the regulation?

ODPS maintains a professional staff for the specific purpose of providing training on a regular basis and administrative support on a continuous basis. The staff consists of a state CDL coordinator and four CDL examiners to support third-party testers and examiners. In addition, the state is divided into nine districts, each with a district supervisor and a station supervisor to give additional support.