

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Public Safety

Regulation/Package Title: Ignition Interlock Devices

Rule Number(s): Ohio Administrative Code 4501-45-01, 4501-45-04, 4501-45-05, 4501-45-06, 4501-45-09, 4501-45-10, 4501-45-11

Date: 7/7/2017

Rule Type:

☒ Amended

☐ New

☐ No Change

☐ Five-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☐ Rescinded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.

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In accordance with 4510.43 of the Revised Code, following the rule review, Public Safety has determined that rules 4501-45-01 through 4501-45-10 remain necessary. Chapter 4501-45 sets forth the requirements for manufacturers to become licensed and have their devices certified. The proposed amendments are to enact provisions required under House Bill 388 of the 131st General Assembly (commonly known as Annie's Law) requiring the Department of Public Safety to adopt rules to govern procedures for confirming and inspecting the installation of immobilizing or disabling devices.

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

Revised Code 4510.43 and Revised Code 4510.45

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.

No.

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

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)?

The purpose of the regulation is to fulfill the Department's statutory obligation under R.C. 4501.43, 4501.45, and 4501.46 to license manufacturers of ignition interlock devices prior to their engaging in business in Ohio and ensure that all devices for use in Ohio meet minimum acceptable performance standards as published by NHTSA. Specifically, the amendments are proposed to implement the provisions of HB 388 of the 131st General Assembly.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes? *The Department will continue to review applications for licensure and certification to ensure compliance. Evaluation of these documents will check for completeness and accuracy. Each model type must be tested by an independent testing laboratory and these results will be assessed to ensure all devices meet minimum standards. Additionally, inspections will now take place of manufacturers/installers to ensure proper compliance with statutes and OAC provisions dealing with the installation and monitoring of ignition interlock devices.*

Development of the Regulation

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

A stakeholder meeting was held from 10:30 a.m. to 12:30 p.m. on May 11, 2017 at the Ohio Department of Public Safety, 1970 West Broad Street, Columbus, OH 43223. Present were representatives of the following currently licensed manufacturers: Smart Start of Ohio, Low Cost Interlock, Intoxalock, Draeger Safety Diagnostics, Lifesafer, Alcohol Detection Systems, Best Labs, and Alcolock. Guardian Interlock was invited but did not attend. The Ohio Judicial Conference was asked for comment on the proposed rules as well.

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

Many of the changes suggested throughout the rules suggest changing “licensed” to “certified.” This change cannot be considered as the Ohio Revised Code states that manufacturers are “licensed” and devices are “certified.”

4501-45-01

Several additional definitions were suggested. Many of the additional terms defined are commonly used terms and therefore do not need to be defined in the Administrative Code. One term that will be added is:

“Rolling retest” or “random retest” is a notification from the ignition interlock device that required the offender to submit a breath test after the motor vehicle has been started.

4501-45-02

Many changes were suggested for rule 4501-45-02, however, this rule is not up for review at this time. It was provided for context at the stakeholder meeting.

4501-45-03

Stakeholders made several suggestions to the appeal process, however, much of this is spelled out in the Revised Code. The stipulations dealing with the 10 day notification will not be incorporated as it is not necessary; manufacturers are promptly notified regarding any issues with their application and are provided due process regarding any proposed denial in accordance with Rule 4501-45-05 of the OAC. The changes to the criminal record portions are not recommended as it would inhibit the Department’s ability to protect the public from employees who may present a threat to public safety. The word “may” is used in paragraph (B) to allow the Department flexibility to consider all criminal background check inquiries on a case-by-case basis. A suggested change to paragraph (H) is being made regarding a manufacturer notifying the Department within thirty days of a change to business

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name, acquisition by another manufacture, or merging with another manufacture; replacing the reapplication language. It was suggested that the certification and licensing fees be increased from \$100 to \$200; licensing and certification fees are set in statute and cannot be amended in rule.

It was also suggested that the lookback period for criminal convictions be limited to 5 years instead of 10 years. The Department does not recommend the change and will keep the lookback period at 10 years and treat each offense on a case-by-case basis to determine if an individual is a threat to public safety.

4501-45-04

Changes to this rule are not recommended. Many of the changes pertain to NHSTA standards on ignition interlock device certification, which are incorporated in the Administrative Code. However, when the standards are included as an appendix, they are already considered part of the rule. The camera stipulations are not recommended as cameras are not required on ignition interlock devices until 2020, and the Department does not want to limit those manufacturers that do not currently have cameras from doing business in Ohio. Regarding the indigency information; the Department will set the indigent fee, however, the determination of indigent status is left to the counties and courts in Ohio. The Department directive on indigency for ignition interlock devices should be going out the first week of July 2017.

It was also suggested that the lookback period for criminal convictions be limited to 5 years instead of 10 years and to limit the background checks to installers (removing manufacturers). The Department does not recommend the change and will keep the lookback period at 10 years and treat each offense on a case-by-case basis to determine if an individual is a threat to public safety. Limiting the requirements to installers would hinder the Department's responsibility to protect the public. Again, offenses are evaluated on a case by case basis, and anyone who is denied the ability to work in this field is given an opportunity for a hearing.

4501-45-06

*No changes are recommended for this rule as the Ohio Revised Code governs the overall process for appeals. The comment regarding 10 day notification of the hearing examiner's decision is not necessary as stated above in the comments for rule 4501-45-03. Agencies typically provide hearing examiner reports within 3 to 5 days. **4501-45-09***

A change will be made to this rule based on the discussion at the stakeholder meeting on May 11, 2017. Paragraph (B) will delete "upon the font of" and replace it with the word "to" so that the label just must be affixed and visible rather than on the "front" of the device.

4501-45-10

Changes were suggested to allow for electronic storage of records, but Ohio law already permits electronic record storage (Revised Code Chapter 1306). It was also suggested that the manufacturer only need to report an interlock violation to the Department of Public Safety. However, providing information to the courts is the basis of the ignition interlock program for monitoring. This allows the courts to properly monitor an offender's driving privileges.

4501-45-11

A form to incorporate by reference was suggested based on definitions that were also suggested in rule. The suggested change was not recommended as the definition that required it was not recommended. However, we will be adding the "Certification Affirming Installation of and Ignition Interlock Device" to the rule.

The stakeholders present agreed to provide access to their databases so the Department can have instant access to required information. This information serves a check and balance between the manufacturer and installers. It will also save the manufacturers/installer time, as they will be relieved of spending the time/manpower to provide the information to the Department.

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?

It is up to the judicial system to assign when an ignition interlock device is appropriate for an individual. However, the Department will keep records of information on the number of devices installed, repeat offenders, and other applicable information that would be available for continued analysis of the program.

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?

The statute does not provide for alternatives as they apply to manufacturer licensing. In regards to device certification, the Department and participating stakeholders agree that NHTSA provides the recognized and accepted standard for the industry, and therefore, no other alternatives for performance standards were considered.

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.

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

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The applicable sections of the Ohio Revised Code (4510.43 and 4510.45) and the Administrative Code (4501-45-01 thru 4501-45-11) were reviewed to ensure that these regulations do not conflict with or duplicate regulations governing ignition interlock manufacturer licensure and subsequent certification of the manufacturer's devices.

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 Department will continue to review applications for accuracy and completeness. As the regulation of the device standards is measurable and tested by independent laboratories, this ensures there is a consistent and predictable regulation as to whether or not a device meets accepted standards. The Department is developing training for inspections and working with the ignition interlock device industry to ensure that the public is protected through the proper use of the devices with as little impact to the business side of the industry as possible.

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; *The regulations impact 9 currently licensed ignition interlock manufacturers in Ohio who have a combined 12 certified devices, as well 180+ installer vendors, which is expected to rise.*

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

In accordance with R.C. 4510.43 each immobilization and disabling device for application has an application fee and R.C. 4510.45 requires manufacturers of ignition interlock devices to apply for licensure and file an annual report, which both have applicable fees. It is expected that adverse impact in the form of application fees, background checks, laboratory analyses, assessment and penalties associated with annual report. Manufacturers may also be subject to penalties for failure to timely and accurately file annual reports and/or pay annual fees. Additionally, failure to timely and accurately file and/or pay annual fees shall be reasons for denial, suspension, or revocation of a license or certification. HB 388 requires the Department to create a form (Certificate Affirming Installation of an Ignition Interlock Device) for certification of an installed device to be signed by the installer and presented to the offender to present to the registrar or deputy registrar in order to gain unlimited driving privileges. Language regarding denial, suspension or

revocation has been amended to allow the Department greater flexibility when an installer or manufacturer violates the law and discipline is necessary. In rule 4501-5-05 a fine not to exceed \$1,000 has been added to the disciplinary measures the Department may impose, as well as altering how a suspension may be instituted. These changes have been made to ensure that the Department is able to work with the industry to avoid revocation while still addressing violations, which in turn avoids creating a more severe adverse impact. Background checks would also be required for installers going forward. The cost of background checks run \$35-60.

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

Most of the fees associated with these regulations are set in statute. Annual application fees are \$100 for licensure and \$100 for each device to be certified. The annual report fee is 5% of net profit the manufacturer earned during the 12 months their license was valid. The time reported to compile this paperwork was several hours over the course of two days. Failure to timely file an annual report and/or pay the annual fee shall result in a penalty amount not exceeding the greater of \$50 or 10% of the annual report fee. Failure to file annual report or pay total annual report fee, may result in manufacturer being assessed \$50 per day up \$3,000 after 60 days of not filing/paying total annual report fee. Completing the Certificate Affirming Installation of An Ignition Interlock Device, will result in negligible printing and time costs for installers.

Fees that are established in the rule include the background check cost, which is approximately \$35-60 for state and federal, the price varies depending on the agency that performs the check. The background check has been a requirement in the past, the method has been updated to current standards and will be a requirement instead of by request. The background checks are proposed to keep at-risk persons from becoming installers as the devices being installed are there to provide for the safety of the public by keeping intoxicated persons off the road.

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

Participating stakeholders shared that the regulations pose only minimal impact and do not pose undue hardship. Therefore the Department determined that the adverse impact is justified to ensure a standard level of service and performance to those who must ultimately use an immobilizing or disabling device in their vehicles. Additionally, House Bill 388 of the 131st General Assembly requires the Department to adopt rules to govern procedures for confirming and inspecting the installation of immobilizing or disabling devices.

Regulatory Flexibility

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

The authorizing statutes for manufacture license and device certification do not provide any exemptions or alternative means of compliance.

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?

The Department will enforce all rules under 4510.43 and 4510.45. For licensees who may have incomplete or erroneous information in applications, they will be reviewed and advised of potential errors and procedures to correct errors. Failure to timely and/or accurately file annual reports may result in fines as well as denial, suspension, or revocation of license or certification. Language regarding denial, suspension or revocation has been amended to allow the Department greater flexibility when an installer or manufacturer violates the law and discipline is necessary. In rule 4501-5-05 a fine not to exceed \$1,000 had been added to the disciplinary measures the Department may impose, as well as altering how a suspension may be instituted. These changes have been made to ensure that the Department is able to work the industry to avoid revocation while still addressing violations, and thus creating a more severe adverse impact.

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

Notices of rule adoption will be sent to listed contacts for each manufacturer. A link to the Ohio Administrative Code will be added to the list of certified devices that is on the Department of Public Safety homepage:

http://www.publicsafety.ohio.gov/links/Approved_Interlock_Devices.pdf.

Manufactures will continue to be licensed and certified according to these specifications of the rules.