

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Public Safety, Private Investigator and Security Guard Services

Regulation/Package Title: Licenses/Firearm Bearers

Rule Number(s): 4501:7-1-01; 4501:7-1-04; 4501:7-1-08, 4501:7-1-09; 4501:7-1-16; 4501:7-1-22; 4501:7-1-23

Date: _____

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☐ Rescinded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.

Chapter 4501:7-1 of the Ohio Administrative Code sets forth rules for private investigators and security guards in Ohio. The rules proposed for amendment clean up language dealing with firearm bearer (FAB) notations that permit registered private investigators and security guards to carry firearms while performing their job duties. Most provisions dealing with FAB have been moved to two new rules (4501:7-1-22 and 4501:7-1-23), and cleanup has been

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done in the amended to rules to accommodate these changes. The rules are proposed to clear up ongoing confusion regarding the carrying of firearms as the firearm bearer notation stipulates on an individual's registration.

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

Section 4749.02 of the Ohio Revised Code grants rule making authority to the Director of the Department of Public Safety to administer Chapter 4749. ORC.

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.

The regulations do not implement federal requirements, nor are they being adopted to participate in federal program.

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 primary public purpose of the licensing and registration rules is to ensure the safety of Ohio citizens by requiring all those who want to provide security and investigative services in Ohio to have the requisite experience, and proper background to provide these services, and in this case specifically those that have an FAB notation on their license. The security industry in Ohio protects 85% of the critical infrastructure in this state, including schools, government facilities, and utilities. It is in the public interest to ensure that members of the industry maintain a professional standard to protect these critical assets. The rules provide a consistent standard for members of the industry, and ensure the citizens of Ohio are confident that those who provide these critical services are of the proper character to fulfill their duties. FAB notation specifically requires completion of a basic firearm training program including 20 hours of handgun training from the Ohio Peace Officer Training Commission or its equivalent. If an individual intends to carry a firearm other than a handgun, but individuals must submit satisfactory evidence of completion of a minimum of 5 hours of training in the use of the firearm from and Ohio Peace Officer Training Commission approved training.

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

The agency will measure the success of these regulations by examining the results of the vetting process these rules establish for applicants for FAB.

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.

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

On September 12, 2017, a bulletin e-mail was sent to all 1029 subscribers of the PISGS company subscriber list with a link to the proposed amended and new rules asking for comment. The subscriber list includes all licensed private investigator and security guard companies in the state.

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

Q. Will FAB registration/renewal fall to the applicant instead of the licensee.

A. Registration/renewal will continue to be a shared responsibility.

Q. Will background checks be valid for 1 year instead of 30 days?

A. BCI Background checks are already valid for one year from the date of issuance. "Rapback" takes place in the 30 day window.

It was noted that no exemption for retired law enforcement officers that may carry firearms pursuant to 18 U.S. Code § 926C is included in the FAB requirements and a change was requested to allow those retired officers to carry based on their qualification under that law. Response: This would require a statutory change to 4749.10 ORC, which requires the training. The Department is looking into the various statute changes.

Renewal and requalification do not match up and individuals may be forced to obtain and pay for a new ID card twice in a year because of the qualification date. Response: In order to match up qualification dates with renewal dates or allow for a variance, a statutory change to 4749.06 and 4749.10 ORC, would be required. The Department is looking into the various statute changes.

Q. Why is an additional requirement being included for an FAB holder to carry a concealed weapon?

A. This requirement is not new as any individual wanting to carry a concealed handgun in Ohio must do so in accordance with Section 2923.125 ORC or fall within one of the exemptions in 2923.12 (C). The new rule simply makes this more clear to eliminate confusion.

Q. Why are rifles (AR14, M4, or other variants) prohibited as some private investigator and security companies are conducting high risk/threat operation such as fugitive apprehension/recovery?

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A. If an individual intends to carry a firearm other than a handgun, the individual must submit satisfactory evidence of completion of a minimum of 5 hours of training in the use of the other firearm type from an Ohio Peace Officer Training Commission approved training class. OPOTC does not offer rifle course for civilians.

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?

There is no scientific data to consider.

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?

Specific provisions within the regulations are considered when determining all of the requirements for licensure are met. Alternate types of training, and educational experience is considered when evaluating the previous experience requirements. Alternate experience that is considered when an applicant applies for licensure includes military experience and prior military training. Each applicant's alternate experience and training is evaluated on a case by case basis to determine its applicability to the experience requirement set forth in the chapter.

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?

Review of the ORC and OAC was completed and no duplication was found.

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 administrator of licensing and registration oversees the daily activity of those employees who process applications for provider licensure and the registration of provider employees. Each licensing employee follows an established check list to ensure consistency when reviewing applications to ensure all requirements for licensure and registrations are met. All applications for licensure and registrations processed by the licensing staff are reviewed by the administrator prior to final approval to ensure all processes are consistent and predictable. The administrator conducts periodic staff meetings to ensure all licensing employees receive any necessary updates in a timely manner. The administrator of enforcement and compliance oversees the daily activity of the investigators. The administrator assigns all complaints and

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monitors each investigation of non-compliance. A uniform method of documenting investigations has been established. The administrator provides daily guidance to ensure all investigative processes are consistent, fair, and compliant with the laws. Each investigator has received advanced training in investigatory methods and standards to ensure consistent quality and accuracy. The administrator conducts periodic meetings with the investigative staff to ensure they receive all necessary information in a consistent manner.

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;

There are currently 863 companies licensed in Ohio to provide either private investigation, security guard services or both. Approximately 23,000 persons are employed by these 825 licensees. The number of new companies varies from year to year, and an exact number of new applicants cannot be specified or anticipated.

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

Each business seeking licensure to provide security services, private investigation services or both must apply with PISGS. The application form may be submitted on-line. The form can be downloaded and sent in as well result in the cost of postage.

A fee of \$ 375.00 is required for each new license application. The processing of applications submitted by veterans or the spouses of veterans is given priority to the extent possible. Once military service is verified on their application, and all other requirements are met, applicants who submit by mail will be manually set aside and processed through the PISGS database system ahead of non-military affiliated applications. All applicants who submit their application on-line will be issued a license with no further manual processing required. via regular U.S. Mail, which would incur postage costs for the applicant.

An applicant seeking licensure must also designate at least one person who will serve as the Qualifying Agent (QA). A separate application form for each potential QA must be submitted (available online), along with a \$25.00 fee for the examination that is given to each QA. The exam is given in Columbus twice a month, and a QA applicant

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will incur travel costs to appear and take the exam. Travel costs will vary, depending on when and from where the applicant travels. The exam itself may be waived for individuals who are or who have been a QA for another licensee. QA applicants are allotted three opportunities to pass the exam. In the event that a particular applicant does not pass, a company will then be required to designate a new QA. In that case, the process of the QA application would begin anew, with additional application costs being assessed.

There is a \$5.00 fee for the enrollment of a QA in the Attorney General's retained applicant fingerprint database, which serves to update PISGS in the event that the enrollee is arrested in Ohio. Enrollment is mandatory.

As part of the application process, the designated QA must provide proof of experience in the area of security services and/or private investigation, depending upon the type of license that a business desires. Prior law enforcement experience and military service in the armed forces are given special consideration in determining whether the minimum experience requirement has been satisfied. Once military service is verified on their application, and all other requirements are met, applicants who submit by mail will be manually set aside and processed through the PISGS database system ahead of nonmilitary affiliated applications. All applicants who submit their application on-line will be issued a license with no further manual processing required.

A QA applicant must provide five letters of reference. An applicant will incur some minimal costs in contacting the references and ensuring that the letters are sent to PISGS in a timely fashion. A criminal history check is required for each new QA applicant. In order to complete the background check, a QA applicant must be fingerprinted. The fingerprints may be taken and submitted to BCI&I at any designated WebCheck facility. Costs for this service vary from facility to facility, and range from \$22.00 to \$40.00 per submission.

Businesses may choose to operate a branch office as well as a main office. The application fee for each new branch is \$100.00. If approved, PISGS assigns each branch its own license number. There is no limitation on the number of branches a company or business may license.

In the event that all of the minimum qualifications for licensure are not satisfied or if there is no QA approved, the license will be denied. A business can pursue a hearing to contest the denial only the denial is due to lack of verification of experience. If a business chooses to operate without a license or after a denial, criminal charges for unlicensed activity may be pursued, subject to approval by the appropriate prosecutor.

Each license issued by PISGS expires annually on the first day of March. Licensees must submit a renewal application prior to that date. The annual renewal fee is \$275.00 for each main office license; there is no fee to renew any branch office license under the proposed rules. If the renewal application is not received by the annual deadline,

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the licensee will be deemed expired, and the business would be required to apply just as if it were seeking licensure for the first time. An initial license application fee of \$ 375.00 would be necessary. The QA application fees would also be required to be paid and any associated branch offices.

All licensed businesses must acquire and maintain proof of general liability insurance in the amounts specified by statute. Failure to maintain the requisite insurance could result in administrative action being taken against the business; in turn, a civil penalty could be assessed against the business and other penalties could be imposed, up to and including the revocation of the business' license.

All licensees are required by law and rule to register all their security guard and private investigator employees. Registration is to occur within 10 days after the employee is put on the business' payroll. Registration is accomplished by the submission of an application and fee of \$40.00 per employee. The application form can be downloaded from the PISGS website, and may be submitted on-line or by mail. The same postage costs mentioned above will apply. Five dollars of the fee represents the cost of the person's enrollment in the Attorney General's retained applicant fingerprint database, which serves to update PISGS in the event that the enrollee is arrested in Ohio. Enrollment is mandatory. Many licensees require the individual employee to pay the registration fee, although that is not a matter governed by PISGS. There are no restrictions on the number of employees a company may hire. However, with only one exception, all employees performing security or private investigation services must be registered. Peace officers holding a valid and current commission and who are working for a licensee are not required to be registered or to apply for FirearmBearer (FAB) notation.

Along with the application, the company must provide a recent passport-style photograph of the employee, which will be placed on the identification card issued by PISGS once the application is approved. QA applicants must also submit the photo. If the photo is taken at a drug store or other retail photo center, the cost to the person or business purchasing the photo is approximately \$10.00 - \$15.00. Other photos may be submitted so long as all size and content specifications are met.

Each applicant for a new registration must submit a set of fingerprints for the purpose of conducting an Ohio criminal history check of the applicant. Since the fingerprints may be obtained at any authorized WebCheck facility, costs for the service vary, and may range from approximately \$22.00 to more than \$40.00 per set of fingerprints. While some licensees pay this cost for each employee, many require that the employees either pay directly or reimburse the company.

If an employee or QA will carry a firearm in the course of his or her duties for the licensee, a separate application for a firearm bearer (FAB) notation must be submitted. The FAB notation application can be part of the original registration application, or an application can be filed after an employee has been registered with PISGS. The cost for the application is \$15.00. An employee must obtain an FBI record check to ensure

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that he/she is not disqualified from having a firearm by reason of certain criminal convictions; fingerprints are required for the FBI record check. In addition, proof that the employee has completed a 20 hour OPOTA approved firearms training course (cost of \$100) and qualified with the firearm he or she will carry must be sent to PISGS. The employee, once approved for the FAB notation, must requalify on an annual basis in order to maintain the notation. The costs of qualification and training are typically borne by the employee. An employee may not carry a firearm until he or she has received a registration card showing the FAB notation.

Failure to register employees or failure to register employees in a timely manner can result in administrative action taken against the business. The penalties for a violation of these types generally include the imposition of a civil penalty and may include action taken against the business license, up to and including revocation in instances where there are repeated cases.

Once an employee is registered, the company is responsible for renewing the registration annually. Registrations expire on the date that they were originally issued. If the registration is renewed prior to the expiration date, no new application need be processed.

However, if the employee's registration is allowed to expire, then the entire registration process must be repeated and the application fees paid. Similarly, registrants who are hired by more than one company must be separately registered by each company for which they perform services.

Initial registration applications and renewals for employees who are veterans or spouses of veterans are, to the extent possible, given priority for processing. No added fee is assessed for this service, but proof of military service may be requested. Veterans and their spouses are not exempt from registration. Once military service is verified on their application, and all other requirements are met, applicants who submit by mail will be manually set aside and processed through the PISGS database system ahead of nonmilitary affiliated applications. All applicants who submit their application on-line will be issued a license with no further manual processing required.

All licensees are to submit a list of all employees on their respective rosters once every three months. This is not required by statute. The roster is cross referenced with PISGS data records of the company's registered employees to ensure Revised Code registration compliance. These quarterly reports may be sent to PISGS by mail, facsimile transmission or electronic mail. There is no cost to file a quarterly report; however, postage expenses will be incurred for reports sent through the postal service.

If an employee is separated from service with a particular business, that business must file a termination report with PISGS within 10 days after the employment ends. A copy of a termination report can be downloaded from the PISGS website; filing is accomplished via facsimile transmission, U.S. Mail or electronic mail. There is no cost

for filing a termination report, although there may be a cost for postage that will vary, depending upon the weight of the mailing or the size of the envelope used.

Enforcement action may be initiated against businesses that fail to file or fail to timely file termination reports. Administrative penalties imposed for violations may include the imposition of a civil penalty. Such penalties may be waived for first time offenders, since this is a paperwork violation as described in section 119.14 of the Revised Code.

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

Pursuant to R.C. §§ 4749.02, 4749.03, 4749.05, 4749.06, and 4749.08, the Department is statutorily required to adopt rules to implement licensing and registration laws for providers of private investigator and security guard services and their employees. The purpose of such regulations is to ensure that all those who want to provide security and investigative services in Ohio have the requisite training and experience, proper background, and adhere to practices established in law.

The majority of the adverse impact posed by Chapter 4501:7-1 in the form of fees, background checks, work experience, and costs to complete training for service providers who also carry firearms, is statutorily derived. PISGS has taken steps to mitigate this impact by adopting flexible provisions that allow alternative types of training, education, and work experience to be considered.

Chapter 4501:7-1 does pose some adverse impact not specifically required or directed by statute. Rule 4501:7-1-09 requires service providers to submit employee rosters quarterly. PISGS estimates that this adverse impact is minimal as service providers retain such records in the normal course of business, a reporting template is provided to the businesses, and the report may be submitted electronically. This reporting requirement allows PISGS to cross reference the company's records regarding registered employees with its own records to ensure compliance with the registration and firearm bearer requirements of Chapter 4749 of the Revised Code. PISGS considers this a balanced regulation that allows PISGS to fulfill its enforcement responsibilities without posing undue burden of compliance on stakeholders.

To further mitigate adverse impact in the form of sanctions, PISGS frequently works with businesses to provide opportunity for correction for paperwork and minor violations of rule. In the event that compliance is not gained, and the administrative process outlined in Revised Code Chapter 119. is pursued, PISGS routinely agrees to waive the imposition of any administrative penalties for first time offenders.

PISGS feels that the minimal adverse impact posed and the implementation of that impact that is statutorily directed justifies the outcome of the regulations to ensure that Ohio private investigator and security services are provided by qualified individuals who adhere to specific standards while serving the public.

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Regulatory Flexibility

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

The rule allows alternate types of training and educational experiences to be considered when evaluating applicants for licensure including military experience and training. Each applicant for licensure who has alternate experience and training is evaluated on a case by case basis to determine if the alternate experience and training satisfies the experience requirement set forth in the rule.

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?

All businesses obtaining a license to engage in the business of security services, private investigation or both are required to provide PISGS with certain information and to file documentation regarding the registration and termination of their respective employees. Before any administrative action is taken against a particular licensed business, PISGS works with that business to ensure compliance with the regulations found in these rules. However, in the event that compliance is not gained, and the administrative process outlined in Revised Code Chapter 119. is pursued, administrative action will be taken.

PISGS routinely agrees to waive the imposition of any civil penalty for paperwork violations (e.g. late filing of termination reports) for first time offenders and to allow time for the correction of any violation. This complies with the requirements of Revised Code section 119.14. However, the imposition of administrative fines or civil penalties for some paperwork violations cannot be waived by PISGS. For instance, businesses must register all employees who are not currently commissioned peace officers. Part of the registration process is a criminal history check for each applicant. If a business fails to file an application for registration for an employee, there will be no background check. Employees that would otherwise be disqualified from working as a guard or private investigator because of convictions for certain felonies or for crimes of moral turpitude would be working in a public setting without any restriction or even without the knowledge of PISGS. The risk of harm to the public when businesses fail to comply with the registration requirements for employees who are firearm bearers in the course of their duties is even higher. Employees seeking firearm bearer notation on their registration cards not only must show proof of firearms training (and requalification with a certain weapon), but they must undergo an FBI record check to show that they have not had a criminal conviction in any state that would prevent them from having or using firearms. Section 119.14 of the Revised Code permits the imposition of administrative fines and civil penalties in such situations because of the risk of direct and serious physical harm to the public.

PISGS may waive the imposition of administrative fines and civil penalties for other types of paperwork violations or for first-time offenders. Each case is evaluated on its own set of facts

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and circumstances. Where necessary, legal counsel is consulted before any administrative action is considered. PISGS offers a payment plan option for companies who request to pay the civil penalty in monthly installments. This option is particularly helpful to small business owners.

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

Members of the private investigator and security provider industry can contact PISGS directly by phone and speak to members of the PISGS staff with any questions they may have. PISGS maintains an e-mail account that is expressly dedicated to communicate with the industry and the public. The PISGS website is kept current with any new information, forms, laws, and rules that are pertinent to the industry.

PISGS sends various letters and e-mails on a continual basis to the provider companies to remind them of upcoming expiration dates for their license, as well as notifying them when their employees registrations are due to expire.

PISGS provides informational seminars at our facility on a monthly basis that are open to anyone in the industry. The seminars cover topics such as laws, rules, how to acquire an online company account, and also provides an explanation of the process of submitting the proper forms and documents for licensure and employee registrations.