



# Common Sense Initiative

Mike DeWine, Governor  
Jon Husted, Lt. Governor

Joseph Baker, Director

## Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Public Safety

Rule Contact Name and Contact Information: Joseph Kirk 614-466-5605, jakirk@dps.ohio.gov

Regulation/Package Title (a general description of the rules' substantive content):

Commercial Driver's Licenses

Rule Number(s): Chapter 4501-47 of the Administrative Code

Date of Submission for CSI Review: August 5, 2024 (Revised August 22, 2024)

Public Comment Period End Date: August 26, 2024

**Rule Type/Number of Rules:**

New/\_\_\_ rules

No Change/ 6 rules (FYR? 6)

Amended/ 9 rules (FYR? 9)

Rescinded/\_\_\_ rules (FYR? \_\_\_)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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

CSIPublicComments@governor.ohio.gov

### **Reason for Submission**

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☒ Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. ☒ Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. ☒ Requires specific expenditures or the report of information as a condition of compliance.
- d. ☐ Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

### **Regulatory Intent**

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

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

Chapter 4501-47 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.

4501-47-01 – Terms and materials incorporated by reference have been updated.

4501-47-03 – The rule has been revised to reduce restrictions as well as remove requirements that are no longer necessary.

4501-47-04 – The rule has been revised to allow third party testers to test their own employees.

4501-47-05 – The rule has been revised to allow third party testers to test their own employees. Extraneous language has been removed regarding sharing office space.

4501-47-06 – Extraneous requirements for third party tester have been removed.

4501-47-07 – No change.

4501-47-08 – The rule has been revised to reduce restrictions. The rule is made clearer that records must be kept for a minimum of three years to include the current year and the previous two years,

4501-47-09 – The rule has been revised to reduce restrictions.

4501-47-10 – No change.

4501-47-11 – The rule has been revised to reduce restrictions.

4501-47-12 – No change.

4501-47-13 – No change.

4501-47-14 – No change.

4501-47-15 – The rule has been revised to more clearly indicate the role the Ohio State Highway Patrol and the BMV have in helping to regulate Ohio Department of Education training and testing.

4501-47-16 – Rule is amended to correct a typo.

- 3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

4506.09 is the authorizing statute and the amplification statute.

- 4. 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 (CFR), 49 CFR 383 govern the requirements states must impose for the regulation and testing of commercial drivers and the issuance of CDLs.

- 5. If the regulation implements a federal requirement, but 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.

- 6. 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.

**7. 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. Trained department of public safety (DPS) employees conduct annual “ride along” with each examiner to ensure that testing is consistent with federal safety guidelines. DPS also conducts annual administrative inspections.

**8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

Not applicable.

**Development of the Regulation**

**9. 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.*

The rule amendments were crafted through collaboration with the Ohio Beverage association and the Ohio Trucking Association in 2023 and 2024. In addition, the rules were sent to third party examiners on July, 18, 2024 for comment through Gov Delivery.

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

The rule amendments were crafted through collaboration with the Ohio Beverage association and the Ohio Trucking Association before being drafted to submit along with this business impact analysis.

**11. 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?**

No scientific data was used in the rule amendments.

**12. 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?**

*Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.*

Ohio Revised Code provisions and Code of Federal Regulations are specific in what is required; they do not accommodate alternative regulations.

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

The department and the BMV have exclusive jurisdiction over CDL testing and reviewed the ORC and OAC via RegExplorer to make sure not duplication has occurred.

**14. 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**

**15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:**

**a. Identify the scope of the impacted business community, and**

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

**b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).**

*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.*

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.

- 16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).**

Many requirements for third party testers have been reduced or removed completely in the draft rules.

- 17. 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**

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

No; The Department 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.

- 19. 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.

- 20. 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.