



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: Department of Commerce, Division of Industrial Compliance

Rule Contact Name and Contact Information:

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

Temporary license or certificate for members of the military and their spouses to practice a trade or profession

Rule Number(s): O.A.C. 1301:3-9-01 through 1301:3-9-05

Date of Submission for CSI Review: 6/10/21

Public Comment Period End Date: 6/24/21

Rule Type/Number of Rules:

New/ 5 rules

No Change/ rules (FYR?)

Amended/ rules (FYR?)

Rescinded/ rules (FYR?)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.

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 1301:3-9 of the Ohio Administrative Code establishes the process for applying for a temporary license or certificate under section 4743.041 of the Revised Code for members of the military and their spouses to practice a trade or profession.

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.**

R.C. 4743.04(D); R.C. 4743.041.

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.

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No.

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

N/A

- 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)?**

To begin, division (D) of section 4743.04 of the Revised Code requires a department or agency of this state that issues a license or certificate to practice a trade or profession to issue a temporary license or certificate to practice a trade or profession as provided in section 4743.041 of the Revised Code. And division (H) of section 4743.041 of the Revised Code requires any such department or agency to adopt rules under Chapter 119. of the Revised Code as necessary to implement section 4743.041's requirements. As such, these rules are proposed to meet the statutory requirements established by the General Assembly in sections 4743.04 and 4743.041 of the Revised Code. Moreover, it is necessary that members of the military and their spouses who apply for a temporary license or certificate to practice a trade or profession have proper guidance on how such application must be submitted, including the criteria that must be met in order to qualify for a temporary license or certificate to practice a trade or profession, which these rules provide.

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

The Division will measure the success of these regulations by eliciting feedback from stakeholders on the clarity of the rules. These rules will be successful when they provide clear guidance to stakeholders on the process for applying for and criteria for obtaining a temporary license or certificate to practice a trade or profession under section 4743.041 of the Revised Code.

- 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.

One comment was received by Ashtabula City Health Department in support for the rule package.

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.

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See attached spreadsheet.

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

None.

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?

N/A

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?

Broadly speaking, most alternative regulations were not feasible given the statutory mandate to issue a temporary license to practice a trade or profession to military members and their spouses under section 4743.04 of the Revised Code. Similarly, the criteria to qualify to obtain a temporary license or certificate to practice a trade or profession is laid out in section 4743.041 of the Revised Code. What alternatives could be considered, such as the length of time that the temporary license or certificate remained effective, were generally decided in favor of the least-restrictive regulation, thereby promoting greater flexibility and access to military members and their spouses to obtain a temporary license or certificate. For example, the term of the temporary license or certificate is set at the statutory maximum of six years, thereby obviating the need to renew the temporary license or certificate during its effective period.

13. 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.*

A performance-based regulation was not feasible given the statutory requirements of sections 4743.04 and 4743.041 of the Revised Code.

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

The Division reviewed relevant regulatory sections to confirm these rules are not duplicative. Moreover, they address newly created legislative mandates found in sections 4743.04 and 4743.041 of the Revised Code. As such, there is little to no chance of duplication, because no regulations would yet cover this subject-matter as it pertains to the Division of Industrial Compliance.

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15. 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 regulations are concise and provide clear, specific guidance on how to apply for a temporary license or certificate to practice a trade or profession under section 4743.041 of the Revised Code. As such, the Division has every expectation that the rules will be applied consistently and predictably because the rules do not provide for discretionary application of the regulation’s criteria. Moreover, the Division will train and educate its staff on the requirements of Chapter 1301:3-9 of the Ohio Administrative Code to ensure that the regulations are applied consistently and predictably.

Adverse Impact to Business

16. 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; and

The scope of the impacted business community includes members of the military and their spouses that practice a trade or profession subject to issuance of a temporary license or certificate to practice a trade or profession under section 4743.041 of the Revised Code.

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

The Division does not estimate that these rules will result in any adverse impact on the impacted business community. The rules expressly waive collection of any fees to obtain a temporary license or certificate issued pursuant to section 4743.041 of the Revised Code. A negligible amount of time is required to obtain the necessary application documentation and to submit the application to the Division. But in the absence of these rules (and the option to obtain a temporary license or certificate to practice a trade or profession under section 4743.041 of the Revised Code), military members and their spouses would otherwise be required to obtain a permanent license or certificate to practice a trade or profession, which would include application fees, time spent submitting the application, proof of experience or education (for certain professions), as well as the passing of an entrance examination. As such, these rules alleviate the adverse impact that would otherwise be borne by those who qualify to obtain a temporary license or certificate to practice a trade or profession.

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.

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As discussed in response to section 16.C above, these rules result in a diminished adverse impact on those subject to the regulations. In the absence of these rules, members of the military and their spouses would either not be able to practice their respective trade or profession or would be required to meet the admission requirements of the respective trade or profession's licensure.

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

N/A

Regulatory Flexibility

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

Neither sections 4743.04 or 4743.041 of the Revised Code provide for exemption or alternative means of compliance for small businesses specifically.

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?

Fees are not collected for issuance of a temporary license or certificate to practice a trade or profession under section 4743.041 of the Revised Code, and there is no penalty associated with Chapter 1301:3-9 of the Ohio Administrative Code. Nonetheless, the Department will work with stakeholders to ease, as much as possible, the process in applying for a temporary license or certificate to practice a trade or profession.

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

The Department's staff is available by phone or email to assist individuals applying for a temporary license or certificate to practice a trade or profession under section 4743.041 of the Revised Code.