

**MEMORANDUM**

**TO:** Pamela Watkins, Rules Administrator, Ohio Department of Public Safety

**FROM:** Paula Steele, Regulatory Policy Advocate

**DATE:** March 5, 2013

**RE:** **CSI Review – Drivers Education** (OAC Chapter OAC 4501-7-01, 4501-7-02, 4501-7-03, 4501-7-04, 4501-7-05, 4501-7-06, 4501-7-07, 4501-7-08, 4501-7-10, 4501-7-12, 4501-7-13, 4501-7-18, 4501-7-19, 4501-7-20, 4501-7-21)

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On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

**Analysis**

The Ohio Department of Public Safety has submitted a rule package consisting of fifteen proposed rules. The amendments address law changes in ORC 4508.02, which authorizes online driver education courses as an option in lieu of traditional classroom instruction. Individuals under the age of eighteen who are seeking to obtain a drivers' license will still be required to take hands-on, behind-the-wheel training. The rule package was filed with the CSI Office on January 17, 2013 with a public comment period ending on January 30, 2013. Fourteen individuals provided comments on the rules during the public comment period and represented primarily the traditional and online programs.

The amendments prescribe online program certifications of successful enrollment and completion, final examination requirements, online security requirements, guidelines for curriculum, requirements for online instructor training; and eligibility and licensing requirements for online programs. According to the BIA, there was comprehensive stakeholder outreach that included course providers for future online programs and traditional driver training. Stakeholders

expressed concerns over equal and fair regulations of the two different types of business models, traditional “brick-and-mortar” and online programs.

Traditional programs are primarily concerned with the Ohio law provision that allows, but does not require, online providers to be affiliated “with a licensed driver training school offering in-person classroom instruction.” Because the rule reflects statute, it is not a regulatory issue under the purview of the CSI Office. Traditional program operators are also concerned with OAC 4501-7-10 *Training Required for the Operation of Class D Motor Vehicles*, which contains a provision that restricts students from receiving more than four hours of instruction per day. Traditional programs fear they will unknowingly provide training to a student who has already met the restricted training hours from online courses. While the Department does not intend on addressing this issue in the rules, it did confirm that it will be the student’s responsibility not to exceed the four hour daily limit. Students will be notified of the requirement in the training agreements. According to the Department, other concerns of the traditional programs are being considered and the rules will be appropriately changed to take into account some of expressed concerns. For example, the CSI Office understands that in order to alleviate some of concern over affiliations, the Department will require online programs to link to the Department’s comprehensive listing of licensed training providers in an effort to ensure that students have access to all of the possible options for their driver training.

Online programs believe an undefined term, “driver training,” will create adverse impacts to business due to the ambiguity of the term and its use in the proposed rules’ requirements. In addition, online programs are concerned about the adverse impacts they perceive will be created because of the requirement that online students take the final examination in-person. The CSI Office agrees that potential adverse impacts may be reduced, and all parties would benefit by defining not only “driver training” but also “driver education,” and the Department has agreed to add these definitions.

With regard to the concern about final examinations, the CSI Office met with concerned online providers and followed up with the Department for a justification for requiring the examination to be conducted in-person, despite the fact that the education itself can be obtained online. Department staff explained that the in-person requirement is necessary to ensure the identity of the test taker, and it does not feel that the identity can be ensured if the test is taken online. The CSI Office believes that the adverse impact that may be created is justified.

After reviewing the proposed rules and BIA, the CSI Office determined that the rules satisfactorily meet the standards espoused by the CSI Office, and the purpose of the rules justifies the adverse impact identified in the BIA.

**Recommendations**

1. Revise 4501-7-01 to include definitions of “driver training” and “driver education.” Review and update the remaining rules in this rule package to ensure the terminology properly reflects the revised definitions.

**Conclusion**

Based on the above comments, the CSI Office concludes that the Department of Public Safety should address the above recommendation before filing this proposed rule package with the Joint Committee on Agency Rule Review.

cc: Mark Hamlin, Lt. Governor’s Office