

**MEMORANDUM**

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

FROM: Paula Steele, Regulatory Policy Advocate

DATE: July 10, 2013

RE: **CSI Review – Drivers Education** (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, 4501-7-09, 4501-7-10, 4501-7-11, 4501-7-12, 4501-7-13, 4501-7-18, 4501-7-19, 4501-7-20, 4501-7-21)

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

This rule package consists of 17 rules proposed by the Ohio Department of Public Safety (ODPS) addressing regulations related to driver education and training, including new authorizations and provisions related to online providers. The package consists of fifteen amended rules and two new rules. The fifteen amended rules were previously analyzed by the CSI Office and a recommendation for the initial rule package was issued on March 5, 2013. Subsequent to the review, changes were made to some of the proposed rules. These changes created additional impacts to business and as a result, a revised BIA and rule package – including the two newly developed rules – were filed with the CSI Office on May 31, 2013 with a comment period ending on June 7, 2013. Five comments were received during the public comment period.

The original rule package amendments addressed 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 original rule package required in-person testing for the final examination regardless of whether the preparation for the exam was

completed online or in the classroom. In the resubmitted rule package, the amendments are primarily driven by the Department's decision to permit online final examinations for students participating in online driver education. As a result, the proposed rules prescribe additional security requirements and other control measures. According to the BIA, the additional security complexities required of online driver education programs will be reviewed by the Department. Therefore the Department proposes a \$600 increase in fees for an online school license to help defray the review costs of the additional security requirements set forth in the required Online Driver Education Security Assessment form. Other changes include incorporations by reference, and definitions of "driver education" and "driver training" as recommended in the CSI recommendation dated March 5, 2013. Also according to the Department, the content of rules 4501-7-10 and 4501-7-11 was reorganized and redistributed for clarity, which led to the creation of two new rules; 4501-7-09 and 4501-7-11.

The majority of public comments requested clarifications. There were also concerns expressed over the liability of hours of training per day. Students are permitted to take no more than four hours of training within twenty-four hours. The Department acknowledged the difficulty in verifying that students, who are taking an online course and behind-the-wheel with a brick-and-mortar school, have not exceeded the four-hour limit. While the Department reassured one commenter that neither the brick-and-mortar school nor the online provider would be responsible for the student taking more than the four hours a day, it also stated that each individual school will need to make the decision on how it will operate to provide the training for students taking the classroom portion through an online provider.

CSI's recommendation in March acknowledged that there were online provider concerns over the Department's requirement that the final exam had to be taken in-person. At that time, the Department explained that the in-person requirement was necessary to ensure the identity of the test taker, and it did not feel that the identity could be ensured if the test is taken online. However, by adding additional security measures included in this rule package, the Department appears to be satisfied that the additional measures mitigate the risk.

The CSI Office recognizes the critical importance of secure online data and transactions. However, some concerns were expressed by stakeholders about both the effectiveness and the potential for duplicative requirements under the ODPS proposal. Therefore, this office strongly encourages the Department to measure and analyze the security requirements prescribed in these rules by tracking instances of security breach and using the information after the rules have been in place for a reasonable period of time to reevaluate the Department's approach to the oversight process and its effectiveness.

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. Review OAC 4501-7-09 (A) (1) to ensure that “driver training” was not intended to be “driver education,” and make the correction if necessary.

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



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)

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