MEMORANDUM

TO: Joseph Kirk, Ohio Department of Public Safety

FROM: Cory Bailey, Regulatory Policy Advocate, Lt. Governor's Office

DATE: December 15, 2015

RE: **CSI Review – Ignition Interlock Devices (OAC § 4501-45-01 through 4501-45-11)**

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) § 107.54, CSI has reviewed the abovementioned administrative rules and associated Business Impact Analysis (BIA). This memo represents CSI's comments to the Agency as provided for in ORC § 107.54.

Analysis

On October 5, 2015, the Ohio Department of Public Safety (ODPS) submitted a draft rule package consisting of eleven rules – one new, eight amended and two no-change – to the CSI Office as part of the five-year rule review requirement contained in Ohio statute. The official public comment period closed on October 28, 2015 with five comments submitted.

The draft rule package establishes rules governing the manufacture of ignition interlock devices. An ignition interlock device is a mechanism, such as a breathalyzer, installed in a vehicle to deter drinking and driving. In order to start the vehicle, the driver must first blow into the device to register their blood alcohol concentration. Providing that the blood alcohol concentration is below the legal limit, the car can be started. The devices are primarily used as a result of court order.

All manufacturers of ignition interlock devices must be licensed, and all devices, including immobilizing or disabling devices that are not ignition interlock devices, must meet certain certification standards. Also addressed in the rules are issues such as annual report requirements, appeals procedure, warning labels, and audits and inspections. The rules are being updated to comply with the 2013 National Highway Traffic Safety Administration (NHTSA) standards.

According to the BIA, the impacted business community includes eight currently licensed ignition

interlock manufacturers who have a combined 12 certified devices. Comments on the draft rules were submitted by five of the licensed manufacturers during the CSI comment period. A range of issues were raised, from suggested grammatical changes to concerns with the appeals procedure. ODPS addressed each concern individually, stating whether the change is recommended and providing an explanation. A number of the suggested changes have been adopted.

ODPS identified several adverse impacts to business in the draft rules. Manufacturers must meet the licensing and product certification standards, including the time needed to submit applications, application fees, background checks, laboratory analyses, and potential penalties for non-compliance. Additionally, manufacturers must file an annual report and pay an annual report fee. The annual report fee is 5% of the net profit the manufacturer earned during the 12 month period their license was valid. ODPS states in the BIA that updating to the 2013 NHTSA standards could cost manufacturers up to $50,000 and take up to seven months to update the devices, although many manufacturers have already made the necessary changes due to other states adopting the standards.

The adverse impacts to business of the draft rules are considerable. However, stakeholders have been active in the drafting process and are in agreement with the proposed update to 2013 NHTSA standards. ODPS must also meet certain statutory obligations regarding licensing. As a result, following review of the draft rules, BIA, and stakeholder outreach, it has been determined that the standards espoused by the CSI Office have been met, and the adverse impacts of the draft rules and amendments are justified.

Recommendations
For the reasons discussed above, the CSI Office does not have any recommendations for this rule package.

Conclusion
Based on the above comments, the CSI Office concludes that the Ohio Department of Public Safety should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.