

**MEMORANDUM**

TO: Joseph Kirk, Ohio Department of Public Safety

FROM: Christopher Smyke, Regulatory Policy Advocate

DATE: October 6, 2017

RE: **CSI Review – Ignition Interlock Devices (OAC 4501-45-01, -03, -04, -05, -06, -09, -10, and -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) 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 eight amended rules submitted by the Ohio Department of Public Safety (DPS). It was submitted to the CSI Office on July 7, 2017 and the comment period closed on July 31, 2017. Four comments were received during this time. DPS sent out a document responding to stakeholder comments on August 14, 2017.

Ohio Administrative Code (OAC) Chapter 4501-45 establishes the requirements for manufacturers of Ignition Interlock Devices (IIDs) to be licensed and have their devices certified. Eight rules are being proposed for amendment in response to House Bill 388 (HB 388) of the 131st General Assembly (also known as "Annie's Law") which requires DPS to adopt rules regarding the procedure for confirming and inspecting the installation of IIDs. Proposed changes include several new and amended definitions, notifying DPS of a business name change within 30 days, criminal background checks for each person listed in application for certification (two weeks before service and every three years thereafter), DPS may request BCII/FBI background check, and permitting DPS to levy a fine less than \$1,000 or a suspension that only pertains to installations. OAC 4501-45-04 includes several new provisions which directly govern the

installation and inspection of IIDs by manufacturers as prescribed by HB 388. In addition, the rule on audits and inspections (OAC 4501-45-10) was restructured for clarity.

According to the BIA, DPS held a stakeholder meeting in May of 2017 with representatives from eight licensed manufacturers and solicited comments from the Ohio Judicial Conference. DPS received input on six of the amended rules, as well as one rule that was not a part of the current rulemaking. Several suggestions were incorporated into the draft rules, including the addition of “rolling retest” as a definition, giving DPS more flexibility on background check inquiries, a requirement for manufacturers to notify DPS within 30 days of a business name change, greater flexibility on the placement of a warning label, and the addition of *Certification Affirming Installation of an Ignition Interlock Device (form OTS 0026)* to the documents incorporated by reference. The BIA also includes early stakeholder input to which DPS did not adopt changes and the justification for its stance.

Stakeholder comments were received from Draeger, Intoxalock, LifeSafer, and Smart Start (all of whom were also involved in early stakeholder engagement). Stakeholder input included suggestions to add more definitions, adjustments to violations and reporting, changes to the calibration timeframe, and questions regarding requirements by court order. Under the licensing requirement rule (OAC 4501-45-03) stakeholders suggested limiting the scope of disqualifying crimes, codifying the indigent fee memo, and adjusting the due date for the manufacturers’ renewal application. Stakeholders also made suggestions regarding warning labels to loosen requirements on font size and permit company-specific labels.

DPS provided a response to CSI staff and stakeholders on August 14, 2017. In the response document, DPS responds to each issue raised by stakeholders, indicating where DPS does not recommend changes (with its justification), answering questions, and acknowledging changes incorporated into the draft rules. DPS also provided a copy of the draft rules which incorporates some stakeholder suggestions.

The BIA identifies the impacted business community as the nine currently licensed IID manufacturers, 12 certified devices, and more than 100 installer vendors. Statute requires manufacturers to apply for licensure and to file an annual report, for which a manufacturer incurs monetary fees, as well as penalties for failing to comply with regular report filing and annual fees. Failure to file the annual report and pay the fee results in a penalty of the greater amount between \$50 or 10% of the annual report fee; after 60 days, the penalty is \$50 per day up to \$3,000. Annual application fees include \$100 for licensure and \$100 for each device to be certified and the annual report fee is 5% of the net profit earned over the 12 months that the license was active. The BIA estimates the cost of background checks to be between \$35 and \$60; background checks are proposed to be mandatory instead of by request, which will likely increase their frequency. The Certificate Affirming Installation of an IID would result in a negligible cost to manufacturers

in time and printing. The amended rules grant DPS more flexibility when disciplining manufacturers who have violated the law by permitting a fine under \$1,000 and granting more leeway in how a suspension may be instituted. The BIA justifies these impacts with the need to maintain compliance with existing statute, to implement provisions of HB 388, and to meet minimum standards published by the National Highway Traffic Safety Administration.

After reviewing the proposed rules and the BIA, the CSI Office has determined that the rules satisfactorily meet the standards espoused by the CSI Office, and the purpose of the rule package is justified.

Recommendation

For the reasons explained 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.

cc: Emily Kaylor, Lt. Governor's Office