



2013 Mid-Year Report on Activities

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Introduction

On January 10, 2011, Governor John R. Kasich signed Executive Order 2011-01K establishing the Common Sense Initiative (CSI) Office and assigning this important task to Lt. Governor Mary Taylor. The Common Sense Initiative is a process for independently evaluating the economic impact of state agency regulations on Ohio businesses.

The Executive Order stated explicitly that Ohio's business community is a partner in the state's success. As such, while regulations play an important role in promoting fair competition and protecting the public, regulations should also facilitate economic growth. Ohio's regulatory process should be built on the foundations of transparency, accountability, and performance. Finally, the priority of a strong regulatory system should be *compliance*, not *punishment*.

In implementing the Executive Order, Lt. Governor Taylor has placed a premium on the principles of transparency and accountability. The CSI Office has been designed to function as a partnership between the Administration, state agencies, the business community, and the public to develop a regulatory framework that balances the need for regulation with the equally important need to promote economic development and job creation. As such, in March of 2011, Lt. Governor Taylor developed a strategic plan to guide the operations of the CSI Office and to serve as the basis for future reporting. The CSI Office formally reports twice each year on its activities and on its progress toward meeting the objectives in the Strategic Plan.

This Mid-Year Report focuses on updates to Goals 1 and 2 for the first half of 2013. These two goals represent the substantive operations of the CSI Office – the rule review process initiated in January 2012 and the accomplishments of the Office through direct outreach to businesses – and thus lend themselves to more frequent evaluation. The CSI goals dealing with the culture of state agencies, communication of CSI efforts, and impact on Ohio's business climate are updated in the annual report required to be issued by February 1 each year, as these goals are more appropriate for annual evaluation. In many cases, the data used to measure results for these goals is not available on a basis more frequent than annually.

As described in the Strategic Plan, the work of the Common Sense Initiative (CSI) Office has been based on the following four principles:

1. Regulations should facilitate, not hinder, economic growth.
2. Regulations should be transparent and responsive.
3. Compliance should be as easy and inexpensive as possible.
4. Regulations should be enforced fairly and consistently.

Goal 1: Develop a CSI process that is efficient, credible, and effective

Measurables:

1. <u>Number of regulations reviewed</u>	705
2. <u>Number of rule packages reviewed</u>	121
3. <u>Number of CSI recommendations issued</u>	25
• Number of rule packages rejected by CSI	2
• Number of CSI rule packages tabled ¹	7
4. <u>Number of revised Business Impact Analyses received</u>	46
5. <u>CSI review times</u> (# of rule packages)	
• 1-30 days	36
• 30-60 days	39
• 61+ days	46
6. <u>Percentage of recommendations implemented</u>	100%
7. <u>Number of motions to invalidate by JCARR</u>	0
8. <u>Number of comments received through the electronic notification system</u>	151
9. <u>Number of business-impacting rules rescinded or amended</u>	348
• Rescinded	24
• Amended	324

Analysis: Effective January 1, 2012, all proposed rules that impact business (new, amended, and those being reviewed under Ohio’s five-year review requirement) are submitted to the CSI review process. In the first half of 2013, CSI reviewed 705 rules, which were presented in 121 rule packages. This represents approximately 41 percent of all rules filed with the Joint Committee on Agency Rule Review (JCARR).

In total, business rule filings have increased over 2012 filings. However, overall rule filings in the first half of 2012 were 55 percent below the historical average, so it was always anticipated

¹ This measure tracks rule packages that after being submitted to CSI for review, were withdrawn or tabled due to questions or challenges from CSI staff. In some cases, the rules are permanently withdrawn, while in other cases they are put on hold while the agency reengages stakeholders and/or revises its rules or analysis to better justify their impact. This statistic was not tracked in 2012.

that rule filings would increase to a number closer to the historical average. Still, overall rule filings in the first half of 2013 are nine percent below the historical average for the years 2003-2011 (before the CSI rule reviews were implemented). In addition, the CSI Office is emphasizing reducing a backlog in agency five-year rule reviews, which inherently drives more rules through the review process but also ensures that they are subject to the CSI analysis. Although rule filings have increased, so have the number of rescinded rules – 24 through the CSI process, compared with 3 for the same period in 2012.

Measurables (3) and (4) reflect the interaction between CSI and state agencies, boards, and commissions submitting rule packages for review. Recommendations are issued by CSI in a formal memo and generally suggest revisions that the submitting agency should make to the draft rules, or in some cases to its Business Impact Analysis (BIA). In two cases (comprising 14 individual rules), CSI recommended that the agency withdraw the rules and not file with JCARR. More than one-third of the packages submitted to CSI required the agencies to revise their BIAs, and seven rule packages (comprising 83 individual rules) were tabled during the CSI review process – either permanently or temporarily – due to concerns raised by CSI and/or stakeholders. These numbers reflect the fact that the CSI process involves significant work with agencies to resolve concerns identified by stakeholders and CSI staff, and concerns about rules must be either resolved by either changing the rules or better justifying their impact before they can move forward with the JCARR rule filing process.

In addition to the improvements in the quality of the rules through the back-and-forth of the CSI process, CSI continues to track the outcome of rules after they complete their CSI reviews. To date, all recommendations from the CSI process have been implemented by the agencies, and JCARR has not attempted to invalidate a business-impacting rule that the CSI analysis determined was justified.

Goal 2: Impact a significant number of regulations based on the Vision statement for the CSI Office

Measurables:

Number of regulatory suggestions received through CSI contacts

Through the first six months of 2013, the CSI Office received 61 suggestions and requests for assistance through the CSI email at CSIOhio@governor.ohio.gov. Liquor permitting issues (17) and issues in the state budget (7) represented the highest percentage of submissions.

Discussion:

The CSI Office operates along two tracks, and those tracks have different measures and different ways of impacting the business climate in Ohio. The formal rule review track is described and measured in Goal 1. The second track represents a bottom-up approach, where the CSI Office seeks input from businesses about the regulations that most directly impact their ability to operate, grow, and create jobs in Ohio. On this track, CSI activities may focus on assisting a single business (serving an ombuds function to help navigate the state bureaucracy), one industry sector, or a broader swath of the business community.

The 61 unique suggestions and requests received through the CSI email address is up from the 46 received for the same period in 2012. Additional suggestions and requests have been received via direct outreach to businesses by the Lt. Governor, staff, and the Small Business Advisory Council. Although this is a positive trend, work remains to be done in increasing awareness of the Office among businesses and the general public, and using the communications resources available – web site, social media, etc. – to drive suggestions to CSI.

The 2011 Report on Activities discussed that the second track of CSI operations is less quantifiable in terms of number of regulations impacted, but is more focused on communicating stories of CSI successes to demonstrate change to the business community. The cumulative effect of these “success stories,” if significant, will help change the perception of Ohio’s regulatory climate and show the impact of CSI. As such, the success of Goal 2 includes a discussion of specific regulatory initiatives, along with specified measurables.

2013 CSI Initiatives

Children’s Summer Meals Programs – The Ohio Children’s Hunger Alliance (CHA) contacted CSI for assistance with two related issues: 1) to allow summer meal programs to deliver meals and have the students eat on school buses that travel to multiple locations, and 2) to eliminate the requirement that CHA programs that receive funding through the Department of Education (ODE) be regulated like restaurants, including licensure and commercial equipment requirements. CSI worked with a number of stakeholders and regulatory entities – including the Ohio Retail Food Safety Advisory Council – to ensure that regulations focused on the safety of

food being provided to children, and to eliminate regulations which did not meet that criteria. In the case of eating on school buses, CSI was able to obtain an assurance from ODE that the practice was allowed as long as certain conditions were met. On the licensure issue, CSI worked with the Departments of Health and Agriculture to secure an interpretation from the Retail Food Safety Advisory Council that the types of programs operated by CHA were not subject to the restaurant-like licensure requirements. As a result, Children's Hunger Alliance and other organizations are able to continue to ensure access to healthy meals for school-age children in need, and to pursue innovative programs for delivering these meals.

Licensing for Veteran Medical Personnel – CSI was contacted by the Cleveland Clinic for assistance in hiring military veteran critical care nurses. The Clinic expressed an immediate need for 100 nurses, but could not hire qualified out-of-state nurses, including those currently serving in the military, and have them begin working in their positions right away because of licensure issues. This licensure gap created significant problems in the efforts to recruit these qualified veterans to Ohio's workforce. CSI facilitated conversations between the Ohio State Nursing Board and the Cleveland Clinic. Through those conversations, CSI was able to clarify the needs of the Clinic and the Nursing Board was able to identify a temporary licensure provision already at its disposal to address this gap and enable the Clinic (and other hospitals looking at similar military recruitment programs) to immediately put these veterans to work in their appropriate positions. As a result, the Cleveland Clinic has hired dozens of qualified military veteran nurses utilizing the temporary license provision.

Adoption Agency Audits – A small private adoption agency in Northeast Ohio approached two Small Business Advisory Council (SBAC) members with concerns about the cost of audits required under statute. In this particular instance, the agency – which receives no public financial support – noted that the cost of the type of audit specified in law would be far more than the amount it received annually in private donations. The SBAC brought the matter to the attention of CSI, which delved further into the matter. CSI and the Ohio Department of Job and Family Services identified that the type of audit required in statute was excessive for the type of business being audited, so they worked together to amend the statute in the budget bill (House Bill 59) to provide for an audit with a more appropriate scope (and far lower cost) for adoption agencies.

Liquor Permit Transfer – A western Ohio restaurant owner contacted a Small Business Advisory Council member to share the difficulties he was experiencing in transferring a liquor license from a restaurant he already owned to another restaurant he planned to open. Specifically, he and his fellow small investors were asked to provide original documentation that seemed excessive to the owner and potentially created an unfair playing field between small, locally-owned businesses and larger national chain restaurants. CSI contacted the Division of Liquor Control which reviewed the owner's pending liquor license transfer and waived the financial verification, allowing for a quicker and easier transfer.

Developmentally Disabled Facility Licensing – CSI was contacted by the owner of two separate developmentally disabled residential facilities in Cuyahoga County. The owner was in the

process of moving and consolidating the residents of the two facilities into a single, new facility but was experiencing delays in the on-line licensing system, due to miscommunication between the two state agencies involved in approving the license. After being contacted by the owner, CSI intervened to resolve the miscommunication, and the owner's license was processed the same day.

Unemployment Compensation Compliance Penalties – A Cincinnati-area business owner contacted CSI regarding notifications received from the Ohio Department of Job and Family Services about an increase in the Unemployment Insurance premium and forfeitures and interest as a result of delinquent reporting. Based on the specific facts of the case, the premium rate remained unchanged, but based on questions raised by the CSI Office about the effectiveness of the notification to the business, the Department did agree to waive and refund the forfeitures and interest that the owner had already paid.

Restaurant Expansion/Building Code – In 2012, CSI helped a restaurant in Columbiana County navigate building code processes to expand into an adjoining building, ultimately doubling its space and hiring four additional employees. As a result of a media story on this project, CSI was contacted by another Columbiana County restaurant owner also experiencing building code issues. In this case, the restaurant was in the process of building a patio to provide more options in serving its customers, but was being required to submit architectural drawings that would cost thousands of dollars and jeopardize the expansion project. Again, CSI worked with the Department of Commerce, and with safety being the primary concern, the Department and local building officials determined that a waiver was appropriate to avoid unnecessary costs for the business. As a result, the restaurant was able to complete its expansion without incurring costly delays or expenses.

Ohio EPA Groundwater Testing – CSI became involved with a company that creates wall-covering materials using customized polymer technologies, after learning of an ongoing discussion stemming from Ohio EPA groundwater testing at the company's plant in Washington County in 1983. These 30-year-old test results were creating a public air of uncertainty around the company and impacting its ability to secure financing to support its operations despite a lack of any evidence of health threats to the public. After numerous stakeholder meetings throughout 2012, and with CSI serving as a mediator, the parties were able to reach a mutual agreement that recognized the presence of contamination on the plant's property and the need to maintain an ongoing regimen of testing. But Ohio EPA was ultimately willing to state in writing that as long as the testing continued to show no health risks, the company would not be subject to enforcement action. This letter from the Ohio EPA provided the stability and certainty the company needed to ensure its ability to employ approximately 400 Ohioans.