



# 2014 Mid-Year Report on Activities

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**Lt. Governor Mary Taylor**

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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 2014. 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**

**2014 Measurables:**

1. <u>Number of regulations reviewed</u>	1,262
2. <u>Number of rule packages reviewed</u>	199
3. <u>Number of CSI recommendations issued</u>	4
• Number of rule packages rejected by CSI	0
• Number of CSI rule packages tabled <sup>1</sup>	15
4. <u>Number of revised Business Impact Analyses received</u>	55
5. <u>CSI review times</u> (# of rule packages)	
• 1-30 days	71
• 30-60 days	72
• 61+ days	56
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>	1,845 <sup>2</sup>
9. <u>Number of business-impacting rules rescinded or amended</u>	810
• Rescinded	93
• Amended	717

**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 2014, CSI reviewed 1,262 rules, which were presented in 199 rule packages.

<sup>1</sup> 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.

<sup>2</sup> A single rule package from the Ohio EPA received 1,400 comments. However, even without this outlier, the 445 comments received is nearly three times higher than the number of comments in the first six months of 2013.

In total, business rule filings have increased over 2013 filings. However, business rule filings during the first two years of the CSI rule review process were 25 percent below the historical average, so it was always anticipated that rule filings would increase to a number closer to the historical average. Moreover, both the CSI Office and the Joint Committee on Agency Rule Review have placed a heavy emphasis on agencies completing the required five-year reviews of existing rules, a number of which were overdue. The five-year review is an essential component of the CSI process to ensure that existing rules are still necessary and the impacts to businesses are still justified, and to amend or rescind those rules that can no longer demonstrate they are justified as written. Partly as a result of this push for reviews of existing rules, the number of amended business rules is more than twice as high as the first half of 2013, and the number of rescinded rules is nearly four times as high.

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). More than one-fourth of the packages submitted to CSI required the agencies to revise their BIAs, and fifteen rule packages (comprising 198 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 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 2014, the CSI Office received 65 suggestions and requests for assistance. Matters involving the Ohio Department of Health constituted the largest grouping of issues (7), with matters involving the Bureau of Workers' Compensation and Ohio EPA being the second largest grouping (5 each). Liquor permitting and topics overseen by ODJFS were the third largest grouping (4 each).

**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 65 unique suggestions and requests received through the CSI email address is up slightly from the 61 received for the same period in 2013. 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 remains 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 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,” have helped 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.

**2014 CSI Initiatives**

InvestOhio tax credit processing:

An accounting firm contacted CSI to express concerns with the processing of InvestOhio tax credits, specifically with the length of time it was taking for certificates to be reviewed and approved. The slow review times were negatively impacting the firm’s ability to assist clients on tax planning, as it was not sure how to plan for Ohio tax liability without knowing the status of the credit application. Additionally, the firm sought informational guidance on applying the Small Business Tax Credit, which impacted the applicability of other tax credit programs such as

InvestOhio. CSI contacted senior staff at the Ohio Development Services Agency and held a joint conference call with the accounting firm. The tax credit applications were subsequently reviewed and processed within ten business days. ODSA also worked with the Department of Taxation to provide the firm with guidance on the application of the Small Business Tax Credit.

Drug Distribution License Renewal:

The CSI Office was contacted by a manufacturing company that was attempting to renew its Terminal Distributor of Dangerous Drugs license to purchase vaccinations to administer to its employees. The firm had undergone a corporate transaction that resulted in a new corporate parent and name. It had timely submitted the renewal form documenting the name change six weeks previously, and had had its drug handling protocols approved. Without renewal of the license, the company would be unable to purchase vaccines to provide to its employees. CSI contacted the Pharmacy Board, which, upon looking into the matter, activated the firm's license the same day and emailed it a copy so that it could order the vaccinations immediately rather than requiring the firm to wait for physical delivery of the license.

Insurance Continuing Education Certifications:

The CSI Office was contacted by a Columbus business that specializes in the restoration and recovery of electronic equipment. Due to the nature of its business, the company is often involved in insurance claims, and provides continuing education for professionals in the insurance industry to understand the issues related to the types of claims it is involved with. The business wanted to better understand the specific requirements in Ohio law before expending the time and money attempting to get certain employees certified as instructors. By working with the Ohio Department of Insurance, the CSI Office was able to help the company get the information it needed to move forward with certification.

Building Permit:

A business owner constructing a nail salon building contacted CSI regarding Ohio Building Code requirements. The owner stated that the Code required he build gender-specific restrooms for both men and women. Based on his experience in the nail salon industry, he expected that his clientele at the new building would be overwhelmingly female and that a gender-specific restroom for men would be under-utilized. This additional capital expense would take up valuable space despite little expected use. CSI contacted the Division of Industrial Compliance, which explained that to address such case-specific instances of businesses whose circumstances vary from the necessarily broad-scoped Ohio Building Code, the Code allows for a business owner to request a variance from a particular Code requirement. Based on the information the business owner provided, the Division offered to walk the owner through the process of requesting a variance and agreed to not oppose the request.

Chemical Solvent Use Compliance:

A printing company contacted CSI regarding the requirements surrounding its use of a chemical solvent to clean its printing plates. Following an inspection, an Ohio EPA inspector requested the company provide laboratory test results of the chemical solvent to determine whether the

handling of the solvent was in compliance with Ohio law. The laboratory test was performed and a summary of the results sent to the Ohio EPA. Due to the technical nature of testing for this specific substance, the summary was insufficiently detailed for the Ohio EPA to find that the printing company was in compliance. The company expressed frustration about the additional requirement and concern that the state would continually “move the target” and avoid resolution of the issue. After discussions with both parties, CSI advised the company to submit all relevant test data resulting from the laboratory test to Ohio EPA rather than only the summary, which it did. When provided with all of the relevant data, the Ohio EPA determined that the company was in compliance with Ohio law.

Tattoo Needle Sterilization:

The Ohio Department of Health submitted a rule review package to CSI that established requirements for the operation of tattoo and piercing facilities. The Association of Body Art Professionals expressed concern that the rule requirements for individualized sterilization of needles and other equipment would significantly increase costs as well as the safety risks for employees and customers of body art establishments. The standard within the tattoo industry is to use individually packaged, pre-sterilized disposable needles, which was acknowledged by Health and the Association to be safer to the public and body art professionals. However, the sterilization requirement was statutory in nature. The CSI Office worked with Health to ensure a common sense application of the rule and successfully introduce a legislative amendment to allow the use of individually packaged, pre-sterilized disposable needles.

Building Permit Approval

The CSI Office was contacted by an architectural firm working on the design of a technical training center for workers in the oil and gas industry. According to the architects, the project was experiencing delays in having building permits reviewed and approved. CSI contacted the Department of Commerce and learned that there was certain specified information the Department was waiting to receive from the architectural firm. The CSI Office was able to clarify and obtain the information needed by the Department and within three business days of the initial contact with CSI, the Department provided the firm with partial approvals for necessary underground, slab, and foundation permits. The building facility is slated to begin training programs for oil and gas-related jobs in January 2015.

English Proficiency Requirement

CSI was contacted regarding a statutory requirement that created unintended burdens for persons applying for certification to practice as an Eastern medicine practitioner or acupuncturist. The Ohio Revised Code required all applicants to complete a spoken English proficiency test, including applicants born and raised in the U.S. for whom English was their native tongue. With the assistance of the CSI Office, this statutory requirement was revised and became effective in March, so that applicants now have multiple (less burdensome) options for demonstrating proficiency in spoken English.