CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Public Safety

Regulation/Package Title: 4501-7

Rule Number(s): 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

Date: May 31, 2013

Rule Type:

- ☐ New
- ☐ Amended
- ☐ 5-Year Review
- ☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. **Please briefly describe the draft regulation in plain language.**
   Please include the key provisions of the regulation as well as any proposed amendments.

The rules in this package set forth the requirements for driver training provided to students and for the licensing of driver training schools and instructors. These rules are proposed for amendment to incorporate online driver education programs as an option in lieu of classroom training for students under the age of eighteen in accordance with legislative changes set forth in HB487 of the 129th General Assembly. The proposed amendments include differentiating "driver education" and "driver training," directions for issuing certificate of completion and certificate of successful enrollment in an online program, final examination requirements, guidelines on the curriculum content and security requirements for an online program, requirements for online instructor training and eligibility for licensing and licensing requirements for the enterprise.

2. **Please list the Ohio statute authorizing the Agency to adopt this regulation.** Revised Code *4508.02.*

3. **Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**
   No

4. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

   N/A

5. **What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

   It is the agency's responsibility and statutory authority to license instructors and schools and set standards for those training the public in the operation of motor vehicles. The regulation is to protect the safety and welfare of the public and to ensure proper training is received.

6. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

   The agency will measure the success of the regulation through the number of approved online providers, as well comparing the number of issued certificates of enrollment compared to the number of issued certificates of completion for an online program.

Development of the Regulation

7. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**
   The Ohio Department of Safety worked with a stakeholder representative group throughout the rule-making process. Those representing future online driver education providers included: Scott Owens (I DriveSafely.com), Jack Coleman (AAA National), Jason Kaber (Igottadrive.com), Michael LaPlume (Costech Technologies, Inc.), Gary Tsifrin

(DriversEd.com) and Robert Schuerger (DROP Program). Representatives of current, traditional driver's training providers (brick and mortar driving schools) included: Tom Deighan & Rich Radi (Top Driver Ohio), Rick Garinger (Universal Drivers Training), Bill George (Richland Driving Academy), Dana Goodwin (Advantage Driver Training), Barbara Hughes (Master & Sylvania), Tina Paff (Bick's Driving School of Western Hills), Randy Durham, and Linda Schetter (Springfield's School of Driving).

8. **What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

   Both online and traditional driver training providers shared the same opinion that the rules should equally and fairly regulate both types of providers. Stakeholders recommended that a maximum number of hours of training per day for online students be established. It was suggested that four (4) hours be adopted as the maximum number of hours of training per day, which is consistent with current regulations for classroom training. The recommendation was accepted and established in the rules.

   The agency also provided the drafted rules and "Online Driver Education Security Assessment" to the online committee members, via an e-mail on May 9, 2013. The following online committee members responded by either phone or e-mail: Tom Deighan & Rich Radi (Top Driver Ohio); Jason Kaber (Igottadrive.com); Michael LaPlume (Costech Technologies, Inc.); Gary Tsifrin (DriversEd.com); and Scott Owens (I DriveSafely.com). Based upon their responses, they indicated the types of personal information that online companies collect may include driver's license information from parents, date of birth of the minor, and credit card information. Additionally, the online committee members provided input on the validity of the security assessment. Companies already providing online driver education indicated that the cost to the survey would be negligible. During this request for information, a third-party company, Michael LaPlume (Costech Technologies, Inc.), contacted the agency and reported the possibility for companies to use a third-party web-hosting company. The company would provide all of the security measures and web hosting necessary for a new online driver education provider at a lower cost than developing a new system. The company also indicated that the security assessment would be completed by the program development office within the third-party web-hosting company.

   After the initial drafts were prepared and reviewed, current brick-and-mortar stakeholders and online companies indicated that the online driver's training standards and requirements as drafted were fair for both traditional and online providers and consistent with other states' regulations.

9. **What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

The "Required Minimum Standards for Online Driver Education" were developed and compared with the National Standards for Quality Online Course (iNACOL). The standards set forth the curriculum requirements for an online driver education program.

The "Online Driver Education Security Assessment" was developed and compared to industry standards for basic security controls, CSIS: Critical Security Controls – Version 4.1 as published by SANS. The CSIS: Critical Security Controls was developed to provide the basic 20 Critical Controls for online companies to secure online programs against threats and cyber-attacks. The Consortium for Cybersecurity Action (CCA), the group responsible for creating and maintaining the Critical Controls was established in 2012 and consists of experts from organizations, federal agencies and national agencies.These experts provide information as to the latest types of attacks and controls to prevent infiltration and the theft of personal identifying information. The CSIS: Critical Security Controls provide possible methods based upon complexity and costs to meet each of the 20 identified critical controls.

The agency worked closely with the Information Technology section, including Security Operations Group (SOG), to identify the basic security controls and draft the "Online Driver Education Security Assessment."

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

The agency considered several alternative regulations. AAA recommended that students take no more than two (2) hours of classroom and two (2) hours of behind-the-wheel in one day. These set hours would have provided for an integrated education. However, the recommendation would have required all licensed schools to change their programs and scheduling since students are currently permitted to take a total of four (4) hours of training in one day with no more than three (3) hours behind-the-wheel training. The agency also considered phasing in the regulations over a six (6) month period to allow the agency time to review and process all applications for proposed online training providers and to roll out the online program. However, this recommendation would have increased costs for the online stakeholders.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

The agency has considered performance based regulation for the training of instructor candidates. The design of the instructor training permits each individual enterprise to determine the delivery and timing of the training based on the instructor candidate's performance. The design of the training program allows the enterprises to then determine each candidate's readiness for licensure.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The agency performed a review of the Revised Code 4508. and Ohio Administrative Code Chapters 4501-7-01 through -21 to prevent duplication.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

Once the regulations become effective, the agency will host an open forum for all current and possible stakeholders to attend. The forum will consist of identifying the changes within the rules and the new processes for licensing online providers. The agency will provide additional training to new school owners to include online enterprises.

Once an online provider application is filed, the agency will follow the same three-tier protocol for reviewing each application. First, agency staff will verify the information in the online provider's application. Second, the agency staff will review the provider's online course and exams. Thirdly, a security expert will review the provider's online security controls. If there is a problem with an application, agency staff will contact the online provider and give the provider time to correct the problem.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. **Identify the scope of the impacted business community;** *There are two hundred ninety-three (293) licensed enterprises with an additional four hundred thirty-seven (437) satellite locations and over three-thousand (3000) driving instructions and training managers that may be impacted by these rules. Since the proposed language incorporates a new program, it is difficult to estimate the number of traditional providers or new online providers that will apply for online driver training licenses.*

b. **Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance);** *The adverse impact includes license fees, background check fees, driving abstract fees, physical check fees, required continuing education course costs, employer time, training, record retention, equipment and costs for certificates issued to students.*

c. Quantify the expected adverse impact from the regulation.
The estimated costs of compliance for online providers and traditional providers are outlined below and were provided by the participating stakeholder groups listed in 7. Fees for initial and renewal applications are the same for both online and traditional providers. Estimated costs to traditional providers will remain the same and will not be affected by the new regulations.

The estimated costs of compliance for online providers include:

Instructor Fees

Initial Instructor application fees - $25 application

Background check - $25 - $80

Driver Abstract - $8.50

Total cost for initial instructor application - $58.50

Renewal of instructor - $10 application

Driver abstract - $8.50

Photo of instructor - $10

Total cost for an instructor renewal - $28.50

Enterprise Fees for class "D" schools(traditional schools)

Driver Training Enterprise application - $250 per location application fee

Background check - $25 - $80 per authorizing official and owner

Total cost for enterprise application - $300 - $380

Enterprise renewal - $50 per location application fee

Total cost for enterprise renewal - $50 per location

Enterprise Fees for online providers

Driver Training Enterprise application - $250

Review of security assessment and online driver education program - $600

Background check - $25 - $80 per authorizing official and owner

Total cost for enterprise application - $875 - $930

Enterprise renewal - $50 per location application fee

Total cost for enterprise renewal - $50 per location

Student Certificate Fees

*Certificate of enrollment - $4 per certificate**

*Certificate of completion for an online driver training program - $4 per certificate**

** The adverse impact on the schools is based on the number of students completed by the business enterprise. The stakeholder group indicated these certificate costs are included in the cost of the course and paid by the student.*

Those traditional providers applying for an online driver training license would be required to pay all the online fees with the exception of the background check per authorizing official or owner.

The estimated costs of compliance for Class "D"(traditional providers) include all of the online provider fees plus the following additional fees:

Instructor Fees

Physical exam - $80

Training of instructor - $200 - $500

Total cost for initial instructor application - $258.50 - $613.50

Training Manager Fees

Training manager course (40 hours) - $550 for the course

Costs for wages, travel, lodging and per diem may include up to $2,450

Total for a training manager course - $3000

Continuing Education Fees

Continuing education for training managers and disability instructors- $90 for the course

Costs for wages, travel, lodging and per diem may include up to $610

Total for continuing education for training managers and disability instructors - $700

Other Costs

The cost of the certificate of completion, which includes classroom or equivalent and behind-the-wheel training, is $4 a certificate. The adverse impact on the schools is based on the number of students completed by the business enterprise. The stakeholder group indicated that these certificate costs are included in the cost of the course and paid by the student.

The cost for an online provider to comply with the security assessment would require approximately $200 - $2000 to complete the assessment and full application. The costs depend upon the complexity of the design of the system. The costs to current online driver education providers are negligible to complete the survey. The systems are already in use and the staff is knowledgeable in the security controls.

The cost for an online provider to have their security assessment and online program reviewed by the agency is $600. The agency will need to employ a security expert to

review the security assessment and various agency staff will need to be utilized to review the online curriculum.

Companies using a third-party web hosting company or new online providers may incur extra costs, up to $2000, if they need to hire staff or send out the security assessment to be completed.

A company using a third-party web hosting company to provide their online driver education program would cost the small business a fee of $25 per student which may be passed to the student in the fee charged.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

It is the responsibility of the agency to ensure the protection of the public by establishing requirements for licensing driver training instructors, managers and providers. The agency, along with the participation of its stakeholders, worked to balance the regulations between the needs of the community regarding quality driver training and student safety and the mandates of legislation.

The security controls were established to ensure that online providers will be protecting the personal identifiable information of minors. The online committee members determined that the security assessment costs and requirements are negligible since most online providers are already operating in other states and currently have these industry standards implemented.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

Exemptions and alternatives are considered on a case by case basis for each business. For example, exemptions to rules 4501-7-03 and 4501-7-05 may be considered depending upon the specific conviction of an applicant or licensee. Exemptions are also considered when meeting the requirements in rule 4501-7-05, for which the agency may accept a completion certificate from a teacher's driving institute, a college or university transcript or diploma in lieu of the instructor training program. The agency provides a list of pre-approved training options for a training manager's continuing education credit on the agency website. All other courses submitted by the training managers may be considered by the agency.

Also, a new online driver education provider may contract with a third-party company who will provide all the security controls and web hosting necessary to support a new online driver education program.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Agency practice directs staff to work with the schools and instructors to allow them time and consideration to correct paperwork violations. The agency identifies the issue and communicates with the school what is needed to complete the application or remedy inspection violations. The agency may also issue a warning letter, in lieu of notice of disciplinary action, should a minor violation be identified that may be corrected. Also, rule 4501-7-04 provides online driver education providers additional attempts to correct any unacceptable rating in the "Required Minimum Standards for Online Driver Education" before denial of an application is considered by the agency.

18. What resources are available to assist small businesses with compliance of the regulation?

The agency will host an open forum for all current and possible stakeholders to attend. The forum will consist of identifying the changes within the rules and new processes the business will encounter with the incorporation of the online program option. The agency will provide additional training to new school owners to include online enterprises.

The agency also works with a course provider to offer the training manager course and training manager continuing education course for a reasonable fee. The agency approves additional training opportunities for training managers. These training opportunities must be pre-approved and requested by the individual training manager.

Information on training opportunities for training managers and disability instructors and any scheduled events are published on the agency website. The agency also sends out monthly e-mail communications to all schools providing information on training opportunities, free materials to be used in the classroom, and legislative changes that may impact the stakeholders.