

CSI: How a Rule Becomes Common Sense

On his first day in office, Gov. John Kasich signed Executive Order 2011-01K which, among other things, established the Common Sense Initiative (CSI) Office. From that point, the office has been charged with reviewing relevant rules and regulations, and weighing the impact those provisions have on Ohio's businesses.

Then 129-SB2 (Hughes) was drafted to incorporate the CSI Office into the state's rulemaking process.

It has been nearly two years since the signing of that order and all parties seem to agree that CSI's involvement is an ever-evolving process while the office is consistently working to learn more about its impact on the system.

The CSI Process

Here is how the rulemaking process now works with the involvement of CSI. Every agency, while reviewing rules or drafting new rules, must evaluate any adverse effect by completing a Business Impact Analysis (BIA). The CSI office uses this form to determine if the purpose of the rule justifies that adverse effect on regulated businesses.

After that, the CSI reviews the BIA and releases the proposed rule to the stakeholders as a public notification. The office then seeks public comment from the stakeholders to learn more about their thoughts on the proposed rule. CSI Director Mark Hamlin told *Hannah News* that getting the public involved early in the process is important.

Business owners can receive these notifications by signing up with the Ohio Business Gateway. For more information, visit <http://business.ohio.gov/>.

After this process, the CSI office will provide its input to the agency which can range from complete endorsement of the proposed rule to suggestions the department could use based on the stakeholder response. The CSI may even suggest that the agency not continue its rules process because the business impact may be too great.

The CSI Impact

The metrics in measuring the state's progress in reducing burdensome regulation and the CSI's effectiveness are still in the beginning stages. The office completes biannual reports which include rule tracking, but the complete, direct impact that CSI has had on the process is yet to be determined.

According to Hamlin, half way through the CSI's second year, there had been a 55 percent reduction in the number of rules that have made it through the Joint Committee on Agency Rule Review (JCARR) process.

"The thing that we've seen which is -- frankly -- a little bit difficult to measure ... is I think that the quality of the rule packages are getting better because of the process that the agencies are going through and because of the new mindset that they are bringing to it," said Hamlin. "We think that's great. We think that the ability for businesses to have the opportunity to weigh-in -- again on the front end -- is making a difference in terms of the kind of rules we're seeing come through."

According to a report that measured the work of CSI through mid-September 2012, the office completed its review of 729 rules while 565 other rules were under review. Of those rules, 51 were tabled. Hamlin added that there were a "significant" number of packages that were reviewed and then revised at the urging of CSI.

"We don't want to just be a stamp at the end that just rejects a bunch of rules," explained Hamlin. "What the ultimate goal of CSI is -- is to change the culture of state government to make it more collaborative between the agencies and the people who are impacted by their regulations."

The "stories" that the office has received as a result of the changing regulatory format in the state are also being used as indicators to how the office is performing. The CSI tracks the public input to find out how reforming the rules have made a successful impact on their respective businesses.

The office uses these stories to share with others in order to, in Hamlin's words, "chip away at the perception that Ohio is a difficult place to do business." He said those stories can sometimes paint a better picture than the statistical analysis.

Hamlin used the example of Custom Culinary, a company based in northern Ohio that manufactures soups, sauces and purees for national restaurant chains and whose recipes, at times, call for an alcoholic beverage. According to CSI, the company's growth was hampered by the Ohio law that required food manufacturers to purchase alcohol in retail containers, but for Custom Culinary, one recipe for a Merlot wine sauce called for 140,000 pounds of wine.

Hamlin told *Hannah News* that the CSI office worked with the Ohio Department of Commerce and the General Assembly to get the rule changed. Now those types of companies can purchase alcoholic beverages at wholesale prices for their recipes.

The Response

Hannah News spoke to both sides of the CSI process: a state agency that crafts new rules, and a stakeholder representative.

Howard Henry, staff counsel for the Ohio Department of Agriculture (ODAg), said that submitting a BIA helps the agency focus on the reasons for the rule and puts those reasons on paper.

"The result is a clarity of purpose and direction as we move forward in the rule process," said Henry. "As the BIA is intended to be read by those outside of the industry, the writing process is often about educating on more than just that particular rule package."

Peg Burns, of the Ohio Council of Behavioral Health and Family Service Providers, told *Hannah News* that the process is still developing in order to best serve both sides of the rulemaking system.

"I think it's a good thing -- I think the kinks are still being worked out," said Burns. "I know that several departments are still trying to figure out whether it applies -- doesn't apply -- slows down some of their rules -- I think everybody is feeling their way around. I think -- on the whole -- it's working well. And I think it'll work better as time progresses."

Henry had a similar take on how the CSI is coming along.

"The CSI office is certainly still an evolving process. There are technology related improvements that are coming that will make the process smoother on the administrative side of things, and I believe will make information easier to find. Beyond that they are rapidly learning about every program and department they work with, and are always available if needed," said Henry.

The Future of CSI

As Burns and Henry point out, CSI is an evolving process that continues to retool in order to best serve its purpose as an arm of the rulemaking system. One change currently going through the General Assembly is its role with so-called "no change" laws.

Reps. Ross McGregor (R-Springfield) and Dennis Murray (D-Sandusky) sponsored HB396 which would have given the CSI additional authority to review rules. As Larry Wolpert, executive director of the Joint Committee on Agency Rule Review (JCARR), explained in his proponent testimony, agencies are required to review their rules every five years and file with his committee. Some of those rules stand as is -- in other words, are classified as "no change."

Wolpert said SB2 did not state that these "no change" rules should be incorporated into the CSI process. According to the executive director, HB396 would have corrected that oversight. The bill passed the House and the Senate State and Local Government and Veterans' Affairs Committee but never made it to the Senate floor by the end of the 129th General Assembly. That means the proposal must start over in the new General Assembly.

As for the future of CSI, Hamlin said while they are still looking for metrics to track the office's effectiveness they are definitely making an impact on the state given the 55 percent reduction in rules filed over a 10 year average.

"What that told us is a couple of things," said Hamlin. "The agencies are taking this process seriously. They understand that there's a new hurdle that they have to go through in terms of justifying the impact that their regulations have and that they're really looking closely at those things before they bring them forward."

The next report to track CSI's work is expected to come out February 2013.

For a flow chart that tracks CSI's role in the rulemaking process and the 2012 Mid-Year Report, visit *Hannah News* at www.hannah.com. Go to Document Collections in the lower right-hand column>Other>Library>2012>12/6/12 CSI document.

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