

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Office of Community Schools, ODE

Regulation/Package Title: Standards for measuring sponsor compliance with applicable laws and rules.

Rule Number(s) 3301-102-08

Date: February 13, 2013

Rule Type:

☒ New

☐ Amendments

☐ 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☐ Rescinded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.

How these rule actions trigger the CSI Process:

Pursuant to Am. Sub. H.B. 555, the Ohio Department of Education (ODE) is required to develop and implement an evaluation system that rates each entity that sponsors a community school based upon three components:

- the academic performance of students enrolled in community schools sponsored by the same entity;
- adherence to quality sponsoring practices prescribed by the department; and
- compliance with applicable laws and administrative rules in accordance with section 3314.016(B)(1) of the Revised Code. (Section 3314.016 of the Revised Code)

According to statute, each component of the evaluation system will be rated exemplary, effective or ineffective and each component contributes one-third to the overall rating of a sponsor's performance. Sponsors that are rated "ineffective" by their overall rating may continue sponsoring community schools in operation at the time the rating is given, but these sponsors are prevented from sponsoring new community schools until the sponsor's overall rating moves from ineffective to effective or exemplary.

The State Board is required to adopt rules for one of the three components, the sponsor's compliance with applicable state laws and rules governing all sponsors of community schools. The proposed rule applies to all sponsors of community schools. The potential negative business impact is that a sponsor rated ineffective for the compliance component will have an increased likelihood of receiving an ineffective overall rating. A sub-set of sponsors, those that are federal non-profit entities approved by ODE to sponsor new start-up community schools, are considered businesses. All other entities that sponsor community schools are public agencies (traditional public school districts, including joint vocational school districts, and educational service centers). The proposed rule will have a potential negative business impact on this subset of federal non-profit sponsors if one of these sponsors is evaluated as ineffective for the compliance component, and receives an ineffective rating on one or more of the two remaining components which comprise the sponsor evaluation system.

For over a year, ODE has been working collaboratively with community school and sponsor stakeholder agencies and groups to develop a sponsor evaluation system, known as the Sponsor Performance Review process. The Sponsor Performance Review, currently being piloted, includes the compliance that is the subject of this rule. Representatives from the Ohio Association of Charter School Authorizers (OACSA - sponsors), Ohio Association of Public Charter Schools (OAPCS – schools and some sponsors), Ohio Coalition of Quality Education (OCQE - schools and sponsors), and the Ohio Authorizer Collaborative (OAC - sponsors) are part of the Sponsor Performance Review workgroup and participated in designing the compliance and quality components. The subject of the proposed rule is not only well known to these stakeholders, but was created with the input of these organizations.

Background:

In Ohio, community schools, known as charter schools in other states, are public schools of choice. The schools are created when an entity called a sponsor enters into a contract with representatives of the proposed community school. The community school contract executed between the sponsor and the governing authority of the community school authorizes the school's opening and operation.

There are two types of community schools, conversions and new start-ups. Conversions may be opened in any district, as authorized by the school district, including a joint vocational school district, or educational service center (ESC). New start-up community schools are limited in their location to school districts known as "challenged" school districts, and only certain sponsors are permitted to authorize them.

Community school contracts are defined in law and each must include a list of requirements per section 3314.03 of the Revised Code. Every sponsor is obligated to monitor and oversee each sponsored school's compliance with all state and federal laws and the requirements of the community school's contract. The sponsor's monitoring and oversight responsibilities are also outlined in law and further explained in rule (division D of section 3314.03 of the Revised Code and Chapter 3301-102-05 of the Administrative Code, respectively). The proposed rule covers the sponsor's requirement to monitor each community school's compliance with its contract and applicable laws and rules.

As noted earlier, most community school sponsors are public entities and therefore not subject to the requirements of CSI; however, a federal non-profit entity that sponsors a community school is considered a "business."

In summary, the proposed rule covers one of the three components of the new sponsor evaluation system and the only component for which rules must be adopted (i.e., compliance with applicable laws and administrative rules in accordance with section 3314.016(B)(5) of the Revised Code). The compliance review is one of three ratings of equal weight that comprise the sponsor evaluation system, as defined in section 3314.016 of the Revised Code, amended by Am. Sub. H.B. 555. Under this compliance component, contractual elements drawn directly from statute (section 3314.03 of the Revised Code) and which must be monitored by the sponsor form the basis of the sponsor's compliance with its monitoring obligations. These elements cover the categories of health and safety, education programs, finance, school operations, and governance. The draft rule includes elements which have been developed and agreed upon by a working group composed of a number of stakeholder agencies and groups, in partnership with ODE, working together for over a year. The law specifies the rating labels to be used and the rule provides the standards for each label. Based upon the findings from the compliance review, each sponsor shall receive a rating of exemplary, effective or ineffective for this part of the sponsor evaluation. Additionally, this rating will contribute to an overall rating of the sponsor as exemplary, effective or ineffective.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Am. Sub. H.B. 555 requires the State Board to adopt rules that prescribe standards for measuring compliance with applicable state laws and rules governing all sponsors of community schools (Section 3314.016(B)(5) of the Ohio Revised Code).

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?

If yes, please briefly explain the source and substance of the federal requirement.

No. The rule does not implement a federal requirement nor is it relevant to the state's relationship to federal programs. The rule does reinforce the sponsor's role as an overseer of its community schools'

compliance with federal law, but the department's role with federal programs is not altered in any way by a sponsor's role with its schools.

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

The proposed regulation does not implement a federal requirement and does not exceed federal requirements.

4. 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)?

Community schools were created to be a high quality public school option. Sponsors authorize and monitor community schools and make decisions regarding a community school's continued operation. Sponsors are regarded as the "first-line" quality control gatekeepers for community schools under their sponsorship. The department is required to develop and implement an evaluation system that rates sponsors based on three components. The three components include the academic performance of students, adherence to quality sponsoring practices, and compliance with applicable laws and administrative rules in accordance with section 3314.016(B)(1) of the Revised Code. Pursuant to Am. Sub. H.B. 555, the proposed rule prescribes standards for measuring community school sponsor compliance with applicable state laws and rules governing all sponsors of community schools (Division 3314.016(B)(5) of the Ohio Revised Code).

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

Success of the regulation is ultimately measured in terms of the achievement and operational compliance of each sponsor's cohort of authorized community schools, and in the shorter term, through a demonstration of sponsor compliance with their obligations and the quality of their practice.

Development of the Regulation

6. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

For more than a year, members of the Ohio Association of Charter School Authorizers, the Ohio Coalition of Quality Education, the Ohio Association of Public Charter Schools, the Thomas B. Fordham Foundation and Reynoldsburg City Schools (both part of the Ohio Authorizer Collaborative) have been working with the department to develop a Sponsor Performance Review, which includes standards for measuring compliance with applicable state laws and rules. Additionally, stakeholder input was actively sought through individual meetings with statewide community school and sponsor organizations, a webinar and the department maintains ongoing communication and dialogue with

community school stakeholders. Stakeholders representing or associated with the following groups have been actively involved and included in the rule development process:

- **Sponsors & community schools** – Using the department’s list-serve for community school stakeholders, subscribers were provided with initial information on the rule development process and timeline, which included an invitation to review the rule posted on the OCS website and provide comments via the community school mail box or participate in a webinar.
- **OACSA** (Ohio Association of Charter School Authorizers), the primary professional organization for sponsors of community schools – ongoing information presented to members.
- **OCQE** (Ohio Coalition for Quality Education), the leading grassroots advocate for public charter schools - provided an invitation to review and provide comments directly or via the web survey.
- **OAPCS** (Ohio Alliance of Public Charter Schools), the largest Ohio professional organization for community schools – provided an invitation to review and provide comments directly or via the web survey.
- **Sponsor Performance Review Workgroup** – members represent: a non-ODE approved sponsor of new start-up and conversion community schools; an approved sponsor; and representatives of OAPCS, OCQE, OACSA and the Ohio Authorizer Collaborative.
- **Buckeye Charter School Boards Association** –shared rule and webinar information.
- **General Population** – posted on ODE’s website.
- **State Board Committee Presentations** – Introduced the topic, providing general information on the proposed rule and receiving general input.
- **ODE staff** – A presentation was held for department staff.
- **Webinar:** Statewide stakeholder participation in a webinar.

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

Overall, there was either general approval or lack of comment about the proposed changes. One sponsor, who is a member of the Sponsor Performance Review workgroup, expressed concern that the standard for achieving an exemplary rating was too high. The workgroup as a whole, however, set this standard and no other sponsor has offered a similar objection.

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 department is not aware of any scientific data regarding a sponsor evaluation system and specifically, rating how well a sponsor does in carrying out its monitoring obligation. Regarding the sponsor's role with respect to the operation of community schools, the National Association of Charter School Authorizers (NACSA) has compiled information about sponsorship from across the country. NACSA has worked to identify practices associated with sponsors who focus on the quality of charter/community schools – sponsors that use rigor in approving new schools; use rigor in making contract renewal decisions; and are conscientious in monitoring their schools. The department has used NACSA's principles to develop its Sponsor Performance Review and has reviewed the proposed rules for alignment with promoting best sponsor practices in order to influence the creation and continuation of academically and operationally successful community schools.

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 did not consider alternative regulations as its only authority to promulgate rules comes from Chapter 3314 of the Revised Code. Pursuant to Am. Sub. H.B. 555 the State Board is required to adopt rules that prescribe standards for measuring community school sponsor compliance with applicable state laws and rules governing all sponsors of community schools (Section 3314.016(B)(5) of the Ohio Revised Code).

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

The proposed rule does not dictate a detailed prescriptive process to regulate sponsor compliance, but they are performance-based in the sense that the sponsor has to demonstrate its monitoring compliance and based upon that demonstration, the sponsor will receive a rating. The draft rule uses the statutory framework and amplifies and explains the measures for verifying a sponsor's compliance with monitoring a sponsored community school's adherence to statutory requirements covering the areas of health and safety, education program, finance, governance and school operations.

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

No other rules speak to standards for measuring sponsor compliance with applicable laws and rules.

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.

The department will make trainings, in-service supports, webinars, consultations, and other professional development opportunities available to community school sponsors, community school governing boards and staff, and other stakeholders. These offerings will be designed to provide an understanding and working knowledge of the rationale and requirements established in the rules. The professional development activities will focus on providing stakeholders with opportunities to acquire the knowledge and skills needed to consistently implement the requirements established in the rules.

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;

One subset of sponsors, federal non-profit organizations could be impacted if the sponsor is rated insufficient in its monitoring compliance and it is also rated insufficient on the other two components in the sponsor evaluation. A rating of insufficient on the compliance component alone does not restrict a sponsor's authority. However, a sponsor with an overall rating of insufficient (across all three components) is unable to sponsor additional community schools.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance);

A sponsor with an overall rating of insufficient can continue to sponsor its current set of community schools, but its ability to expand its sponsorship is curtailed until such time as it no longer has an overall rating of insufficient. This potential limitation would limit the sponsor's opportunity for additional revenue from sponsorship fees.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.

A sponsor can require a sponsorship fee of up to 3% of a community school's state foundation funds. Taking an average of 2011-2012 annual revenue in state funds for site-based community schools (schools are restricted in number; site-based schools are not), and applying 3% to that average, yields up to \$35,100 in annual sponsorship fees per school. A sponsor that is rated insufficient in its compliance rating has an increased likelihood of being rated insufficient in its overall rating and thus potentially limiting its revenue growth if it were unable to authorize additional community schools.

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

Sponsors are the front line in approving, overseeing, intervening and making decisions about the continued operation of community schools. The regulatory intent is justified by the state's obligation to take all actions necessary to promote high quality community schools through exercising its monitoring and oversight of sponsors. High quality community schools are in the best interest of Ohio's students.

Regulatory Flexibility

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

No. There are no such avenues available in statute and no authority given to the department to make alternative means of compliance available.

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?

Not applicable. There are no associated fines or penalties for paperwork violations.

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

There are numerous resources available to sponsors to assist them in understanding their monitoring obligations for community schools. The department's Office of Community Schools' sole function is to provide general information, guidance, and technical assistance regarding all aspects of sponsorship and community schools. Additionally, other offices at the department are available for content specific assistance. The department, by itself and in partnership with several statewide organizations serving the community school population, provides information products, newsletters, content specific updates, webinars and in-person workshops on topics related to overseeing community schools. OACSA, OAPCS, the National Association of Charter School Authorizers and the U.S. Department of Education also serve as resources to the community school population.