

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Education, Office of Quality School Choice

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

Rule Number(s): 3301-102-08

Date: March 21, 2017

Rule Type:

☒ New

☐ 5-Year Review

☐ Amended

☒ Rescinded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.

Ohio law requires the State Board of Education to adopt rules for proposes to rescind and file new O.A.C. 3301-102-08 to align with changes in law as a result of HB 2. The current rule would remain in effect through October 16, 2017 and the proposed rule would be effective October 17, 2017.

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2. **Please list the Ohio statute authorizing the Agency to adopt this regulation.**
3. O.R.C. 3314.016(B)(5) authorizes the State Board of Education to adopt the proposed regulation, i.e. 3301-102-08.

4. **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 proposed rules implement requirements of changes adopted in H.B. 2.

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

Not applicable. The proposed regulation does not implement a federal requirement, and therefore does not exceed a federal requirement.

6. **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)?**

The State Board of Education is required by Ohio law to adopt administrative rules governing standards for measuring sponsor compliance with all laws and rules. H.B. 2 made several changes to the laws governing sponsors and community schools. Consequently, it was necessary for the State Board of Education to update its administrative rules to be consistent with the changes in H.B. 2 and increase the Ohio Department of Education's (Department) oversight of sponsors and community schools.

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

The Department will measure the success of this regulation through improved sponsor ratings on the sponsor evaluation as well as an increase in the number of effective and exemplary sponsors.

Development of the Regulation

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

If applicable, please include the date and medium by which the stakeholders were initially contacted.

Sponsors of Community Schools: Sixty-five (65) entities currently sponsor community schools in the state of Ohio and would be directly subject to this regulation. The

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overwhelming majority of these entities are governmental entities such as school districts and educational service centers. However, seven (7) of the entities currently sponsoring community schools are non-profit corporations.

The proposed rule was posted on the Department of Education website for comment. Sponsors were given the opportunity to comment on each rule. The Capacity Committee of the State Board of Education also discussed the proposed regulations over the course of several public meetings.

Community Schools: The proposed rule was posted on the Department of Education website for comment. Community schools were given the opportunity to comment on the rules. The Capacity Committee of the State Board of Education also discussed the proposed regulations over the course of several public meetings.

Community School Operators: The proposed rule was posted on the Department of Education website for comment. Community school operators were given the opportunity to comment the rules. The Capacity Committee of the State Board of Education also discussed the proposed regulations over the course of several public meetings.

Members of the Public: The proposed rule was posted on the Department of Education website for comment. Members of the public were given the opportunity to comment on the rules. The Capacity Committee of the State Board of Education also discussed the proposed regulations over the course of several public meetings.

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

Public comments were submitted to the Department of Education through email. The Department posted the proposed rules on its website and directly emailed 461 community school and sponsor contacts to request public comment on each proposed rule as well as a cost projection for the implementation of the proposed rules. An initial public comment period opened in June, 2016. The Department received comments and upon review made additional updates to the rules. A second public comment period opened on December 16, 2016 and closed January 6, 2017. Seven (7) responses were received by January 6, 2017 from six (6) community school sponsors and one (1) community school superintendent. The Department reviewed all comments and, where appropriate, made updates.

10. 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 the proposed regulation.

11. 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. The State Board of Education is required by Ohio law to adopt administrative rules governing sponsor applications, sponsor agreements, monitoring and reporting requirements of sponsors, and standards for measuring sponsor compliance with all laws and rules.

12. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

Pursuant to O.R.C. 3314.016, sponsors receive a performance-based evaluation that assesses the academic performance of a sponsor's portfolio of schools, its adherence to quality practices, and its compliance, monitoring, and oversight of applicable laws and rules. Sponsors are subject to incentives and/or sanctions based on the results of the evaluation. The Department incorporated relevant elements of this performance-based evaluation system into the proposed rules, such as the requirement for sponsors to comply with the terms of a quality improvement plan if the sponsor receives an overall rating of "ineffective" on its most recent evaluation, in order to ensure the proposed rules aligned to the performance-based evaluation system currently in place.

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

The Department reviewed the administrative rules adopted by the State Board of Education and itself and determined that no other administrative rules speak to sponsor applications, sponsor agreements, monitoring and reporting requirements of sponsors, and standards for measuring sponsor compliance with all laws and rules.

14. 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.

Upon adoption of the proposed regulations, the Department will revise the compliance with all laws and rules technical assistance documents and webinars outlining the changes to the sponsor evaluation system.

Adverse Impact to Business

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15. 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;

Sixty-five entities currently sponsor community schools. Seven of those entities are non-profit corporations. These seven non-profit corporations oversee approximately half of the community schools currently operating in the state of Ohio.

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

The majority of the impact to community school sponsors will be in the form of employer time for compliance, in that sponsors will need to amend community school contracts to reflect the changes in the proposed regulations and incorporate such changes into the sponsor's regular monitoring and oversight. However, sponsors receive up to three (3) percent of the total amount of payments for operating expenses that each sponsored community school receives from the Department and may utilize these funds for the purposes described above. Further, sponsors regularly review and update community school contracts to account for changes in law or rule and any changes required by the proposed rules could be incorporated into this process.

Regarding the changes to the definition of sponsor eligibility, no additional work is required of the applicant.

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.

Public comments were submitted to the Department of Education through email. The Department posted the proposed rules on its website and directly emailed 461 community school and sponsor contacts to request public comment on each proposed rule as well as a cost projection for the implementation of the proposed rules. An initial public comment period opened in June, 2016. The Department received comments and upon review made additional updates to the rules. A second public comment period opened on December 16, 2016 and closed January 6, 2017. Seven (7) responses were received by January 6, 2017 from six (6) community school sponsors

and one (1) community school superintendent. The Department reviewed all comments and, where appropriate, made updates.

However, the public comments did not include cost projections. Emails were sent directly to all community school sponsors on January 10, 2017 requesting cost projections for the implementation of the proposed rules to be submitted by January 17, 2017. Seventeen (17) community school sponsors responded with costs projections however only fourteen (14) sponsors provided cost projections for the rules in this packet. Three (3) of the seventeen (17) sponsors that responded are considered businesses for the purposes of the Common Sense Initiative while fourteen (14) of the seventeen (17) sponsors are school districts or educational service centers. Sponsors receive a fee from its schools for providing oversight and monitoring of its schools. The fee the sponsors receive is up to three percent of the total funds the school receives for operating expenses from the state.

The smallest cost estimate to implement the proposed rules was \$8,000.00 which was submitted by a sponsor of one community school. The largest cost estimate, \$564,100.00, was submitted by a sponsor with 42 sponsored schools and included costs not specifically attributable to the sponsor. The total number of hours varied from 200 hours for implementation over the entire school year to 1,657 total hours over the entire school year.

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

Despite the concerns of stakeholders, on balance, any adverse impact associated with the proposed rules is related to increased sponsor and community school accountability provisions included in recent changes to law. Further, other changes in the proposed rules are designed to provide community schools with greater clarity as to current obligations under and law and/or increase accountability in certain areas such as fiscal operations and academic performance.

Regulatory Flexibility

17. 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.

18. 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?

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Not applicable. There are no associated fines or penalties for paperwork violations and first-time offenders.

19. 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 obligations under the proposed regulations. One of the primary functions of the Department's Office of Quality School Choice is providing 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, such as the Office of Budget and School Funding for additional information and guidance on how community schools must document participation in learning opportunities. 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 sponsors and community schools. These resources are all provided at no cost to the sponsors and community schools. The Ohio Association of Charter School Authorizers, Ohio Alliance of Public Charter Schools, the National Association of Charter School Authorizers and the U.S. Department of Education also serve as resources to the community school population.