



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Joseph Baker**, Director

### Business Impact Analysis

Agency, Board, or Commission Name: Department of Education

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Approval (Chartering) of Nonpublic Schools; Rules describe the process used by the Ohio Department of Education to issue a charter to a nonpublic school.

Rule Number(s): 3301-39-01, 3301-39-03, 3301-39-04

Date of Submission for CSI Review: 12/19/2022

Public Comment Period End Date: 12/27/2022

Rule Type/Number of Rules:

New/ 0 rules

No Change/ 0 rules (FYR?   )

Amended/ 3 rules (FYR? 3)

Rescinded/ 0 rules (FYR?   )

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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### **Reason for Submission**

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☒ Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. ☐ Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. ☐ Requires specific expenditures or the report of information as a condition of compliance.
- d. ☐ Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

### **Regulatory Intent**

2. Please briefly describe the draft regulation in plain language.

*Please include the key provisions of the regulation as well as any proposed amendments.*

OAC 3301-39-01, 03 and 04 establishes the procedures and requirements related to the issuance of a charter for a nonpublic school. Per Revised Code, all chartered nonpublic schools must comply with the Operating Standards for Districts and Chartered Nonpublic Schools.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

Authority: ORC 3301.07(D)(2) and (M); Amplifies: 3301.07 (D)(2), 3317.024, 3317.06, and 3327.01

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.

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

NA

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)?**

Chartered nonpublic schools (unlike nonchartered nonpublic schools) receive state funding for administrative cost reimbursement and auxiliary services and are eligible to participate in one or more of the state-funded scholarship programs. Students' district of residence must provide transportation to eligible students attending chartered nonpublic schools.

7. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?** The agency tracks the number of charter applications and processing time of program applications. The Agency also tracks requests for technical assistance by applicants.

8. **Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

No.

### **Development of the Regulation**

9. **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.*

The Agency used several rounds of stakeholder engagement including in-person discussions, virtual meetings and written comments. The Agency reached out by phone and email to stakeholders offering comments during the public comment period.

- A draft was made available to stakeholders on August 3
- First stakeholder review August 3-19, 2022 (Draft rules were discussed in person with the Nonpublic Advisory Council on 8-19-22; emails with the draft rules attached were sent to all participating nonpublic schools and service providers)
- Revisions to draft rules August 20- September 8, 2022, based on stakeholder feedback
- Draft rules posted for public comment September 9 – October 6, 2022
- Revised drafts

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- Discussion with Emerging Issues Committee including a review of stakeholder feedback during the October 2022 during the Board of Education meeting
- November 2022, emails, and calls with stakeholders who submitted comments
- Discussion with Emerging Issues Committee, Committee vote took place at the November 2022 meeting of the State Board of Education
- Full board vote at December 2022 meeting

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

- Stakeholder comments referenced use of adjusted gross income for EdChoice eligibility. This provision was added to another rule.
- Several comments misconstrued the draft rule provisions as lengthening the timeline for issuing a charter. Follow up conversations explained the draft rule provisions.

**11. 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?**

No scientific data was utilized to develop the rule. Data regarding processing time was reviewed to determine if the overall timeline for chartering could be reduced.

**12. 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? *Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply***

The Agency did not consider alternative regulations. However, the Agency did consider how the process could be streamlined and shortened without sacrificing the integrity of the chartering process.

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

The Agency confirmed that only the Department of Education has authority to issue a charter to a nonpublic school.

**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.**

The Agency will provide technical assistance to schools seeking a charter and hold regular information sessions in both in person and virtual formats. The Agency monitors

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program productivity measures and requires annual staff training.

### **Adverse Impact to Business**

**15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:**

- a. Identify the scope of the impacted business community, and**
- b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).**

*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.*

Nonpublic schools may have costs associated with preparation of documents necessary to receive a charter. Requirements for documentation focus only on what is required under state statute. Costs associated with these rules will vary by school. Schools that are accredited by a recognized association will require less time to meet requirements. There are no fees charged by the Agency to facilitate the chartering process and no fines are levied.

**16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).**

These rules substantially reduce the time necessary to comply with requirements. Currently, the typical timeline for chartering a nonpublic school is 1 -2 years. Schools are open for this period but students are not eligible for transportation, the school cannot receive state funds (auxiliary and administrative cost reimbursement) and cannot participate in the scholarship programs. Streamlining the chartering process will result in access to additional revenues sooner.

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

Implementation of statute requires that the Department ensure that schools seeking a charter provide evidence of compliance with the Operating Standards.

### **Regulatory Flexibility**

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

No.

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**19. 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?**

No fines are levied. The rules provide for the use of corrective action plans due to noncompliance as opposed to immediate revocation of the school's charter.

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

The Agency provides training and technical assistance for schools seeking a charter. All schools are assigned a specific point of contact in the Agency to help address any issues and concerns.