

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Higher Education

Regulation/Package Title: Standards and Processes for Issuance of Certificate of Authorization Under Section 1713.03, Ohio Revised Code

Rule Number(s): 3333-1-08

Date: 1/5/16

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☐ Rescinded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.

This rule sets forth the standards and processes that institutions of higher education must follow in order to receive a certificate of authorization from the Chancellor of Higher Education.

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

1713.03

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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

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

Ohio law (ORC 1713.03) requires the Chancellor to adopt rules.

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)?**

There needs to be regulation in this area because it is required by Ohio law, and because it gives institutions seeking to obtain or change a certificate of authorization with the information necessary to receive such authorization from the Chancellor. Also, this regulation protects students by ensuring that they are enrolled in institutions and programs that meet basic standards of quality and rigor. Additionally, the Higher Learning Commission and the US Department of Higher Education require state approval of post-secondary institutions operating in the state.

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

ODHE will measure the success of this regulation by ensuring that programs offered at institutions across the state meet the Chancellor's standards in areas such as program content (general education and discipline specific), rigor and length; qualifications of faculty; adequacy of facilities; and services for students.

Development of the Regulation

7. **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.

Multiple face-to-face meetings with leadership (President and General Counsel, C. Todd Jones and Director of Research, Bob Burke) from the organization representing private non-profit colleges and universities (the Association of Independent Colleges and Universities of Ohio, AICUO) and from the previous President (Dave Rankin) of the Ohio Association of Career Colleges and Schools.

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

This rule, and the companion *Guidelines and Procedures for Academic Program Review*, were constructed based on feedback from the representative associations and ongoing feedback we have received from campuses of our review and approval processes. Based on those comments, we have streamlined the approval processes (restructured and simplified proposals; more "desk reviews" vs on-site reviews; clarified/updated standards). There were multiple iterations of this rule and of the *Guidelines and Procedures for Academic Program Review* manual before it was adopted by the Chancellor based on stakeholder feedback.

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?

Not applicable

9. 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?

ODHE considered a less streamlined proposal process that did not accept information prepared for regional and specialized accreditors, but it was decided that the streamlined process would be equally effective and reduce the time the institutions needed to prepare proposals. ODHE considered continuing all on-site visits but determined that "desk reviews" were just as effective in some cases and would save institutions the cost associated with an on-site visit. Finally, ODHE considered conducting on-site visits separately from regional and specialized accreditors, but decided that accompanying those accreditors would eliminate the need for multiple reviews and would reduce time and costs to the institutions.

10. 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.

Our regulations do not dictate the process that stakeholders use to achieve compliance. In that sense they are performance-based regulations. We look at the proposed curriculum, faculty, facilities and student services. We don't dictate a process as to how that is to be achieved.

11. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation? There is no risk of this rule duplication existing Ohio regulations because the Chancellor is the only state official with the authority to issue certificates of authorization.

12. 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 process and standards for institutional authorization and program approval are clearly outlined in our manual, *Guidelines and Procedures for Academic Program Review*. Staff members in the program development and review area are well-versed in the standards and processes and meet regularly to ensure consistent application of the standards and processes. When consultants are used in the review process, they are accompanied by Department of Higher Education staff members and all reports are approved by the Associate Vice Chancellor of Program Development and Approval. All institutional authorizations, reauthorizations and approvals for new degree programs undergo multiple levels of review (10 day posting for public comment, review by the Vice Chancellor for Academic Affairs, review by legal counsel, and final signature by the Chancellor).

Adverse Impact to Business

13. 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;

This rule impacts institutions of higher education that require a certificate of authorization pursuant to ORC 1713.03

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

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.

Fees for review are outlined in OAC 3333-1-13. The adverse impact from this rule is related to the time needed to complete the required proposal and to prepare for and participate in an onsite review in cases where that is needed.

The time needed to comply varies greatly depending upon what is proposed, ranging from authorizations for a new college, to authorizations for new degrees, to authorizations for new campuses for an existing college, to relatively small changes to existing programs. In each case, our agency strives to make the review process as efficient as possible. We accept materials that have been prepared for accreditors (e.g., the Higher Learning Commission), in lieu of our own forms, we have agreed to accept the review outcomes of other accreditors (e.g., the Higher Learning Commission or specialized accreditors) for non-profit institutions that have been continuously authorized by the chancellor for twenty or more years.

Seeking authorization for a new institution would require an employee (working in concert with others on campus) several weeks of part-time work to collect the information necessary to document compliance with the Chancellor’s standards and another two weeks to prepare for and participate in an onsite review. The specific time needed would depend on the scope of the institution’s offerings (e.g., is it a campus that is offering multiple majors and many degree levels or a single purpose institution such as an institution to prepare those in religious vocations).

Seeking authorizations for new degrees (e.g., a new nursing degree) within an authorized institution could be accomplished more quickly using faculty from the discipline. Again, this likely would require an employee about a week to collect the information necessary to document compliance with the Chancellor’s standards. Another week would be needed to prepare for and participate in an onsite visit.

The proposals required for smaller changes (e.g., changes to distance education, curriculum modifications, name changes, etc.) are straightforward and could generally be completed in less than a day, especially when information has already been prepared for specialized or regional accreditors.

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

The Chancellor's approval is required by Ohio law. State approval is also required by the regional accreditor (the Higher Learning Commission) and the U.S. Department of Education for Title IV eligibility. Additionally it is important to Ohio student's that they are attending institutions with appropriate content and rigor so the regulation is necessary to protect the students.

Regulatory Flexibility

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

No, but when colleges are small (e.g., small number of degrees/programs) the necessary breadth of their proposals reflects this smaller size.

16. 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

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

Staff members in the program development and approval area are available for consultation (email, phone, in person) to assist in explaining our standards and processes.