



## Common Sense Initiative

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

**Sean McCullough**, Director

### Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Public Safety, Ohio Homeland Security

Rule Contact Name and Contact Information:

Joseph A. Kirk, jakirk@dps.ohio.gov, 614-205-4888

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

Requirements for school safety emergency management plan and test.

Rule Number(s): 4501:5-1-01

Date of Submission for CSI Review: 3/9/2022

Public Comment Period End Date: 3/23/2022

**Rule Type/Number of Rules:**

New/\_\_\_ rules

No Change/\_\_\_ rules (FYR? \_\_\_)

Amended/ 1 rules (FYR? 1)

Rescinded/\_\_\_ rules (FYR?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.*

The rule is being reviewed to clarify the requirements of the school emergency management plans as required by 5502.262. The rule was transferred from the Department of Education to the Department of Public Safety in House Bill 123 of the 133<sup>rd</sup> General Assembly.

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.

5502.262

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

Not applicable.

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)?

To implement provision for school emergency management plans and testing as required by 5502.262 ORC.

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

Plans will be evaluated by the Department of Public Safety, Ohio Homeland Security to ensure compliance with Section 5502.262 of the Revised Code and rule 4501:5-1-01 of the Administrative Code.

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.*

Name	Position	Organization
James Brady	Superintendent of Schools	Buckeye United School District, Department of Youth Services
Dan Grothause	Transportation Supervisor	St. Marys City Schools
Joe Kitchen	Fire Chief	Ohio Fire Chiefs' Association
Jon Kochis	Fairfield County EMA Director	Emergency Management Association of Ohio
Scott Huddle	Board President	Mad River Local Schools
Tim Armelli	Teacher	Chardon High School
Matt Miller	Superintendent	Lakota Local Schools
Jeff Staggs	Superintendent	Madison Local Schools

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Joe Suozzi	Director of Safety/Security/Preparedness	Olentangy Schools
Dan Girard	Principal	Wilson Hill Elementary, Worthington Schools
Steve Burgess	Executive Director	Ohio School Resource Office Association
Robert Fisher	Chief of Police	Ohio Association of Chiefs of Police, Hilliard Division of Police
George Maier	Sheriff	Buckeye State Sheriff's Association
Kevin Reardon	State Fire Marshal	Ohio Department of Commerce, Division of State Fire Marshal
Emily Eckert	Safe and Supportive Schools Manager	Office of Whole Child Supports
Rick Lewis	Executive Director/CEO	Ohio School Boards Association
Bobbie Boyer	Deputy Director of Prevention	Ohio Department of Mental Health and Addiction Services
Dave Axner		Buckeye Association of School Administrators
Bradley Paramore	President	Ohio School Psychologists Association
Matt McCrystal	Planning Training & Exercise, Branch Chief	Ohio Emergency Management Agency

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

*Dan Grothouse with St. Marys City schools provided the following:*

1. *(C)(1) says "pursuant to division (B)(6) of section 5502.262 of the Revised Code. Stakeholders are defined as:" I have searched that section 5502.262 and cannot locate (B)(6). I'm wondering if this was supposed to be (B)(1)?*

**This change was made.**

2. *In a previous draft revision on the 3301-5-01 section (C)(1) listed mental health provider, local public health department and school safety and security contact as stakeholders to be involved in the emergency management plan. Just seeing if they are to be left out of this version?*

**Mental health provider, local public health department and school safety and security contact were redefined in other parts of the rule.**

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3. *Something to consider. When have multiple IRN's in one complex and a full scale, functional or tabletop exercise is completed it sure would be easier if only one after action report would be required? As an example we have three IRN's in one complex and would need to complete three after action reports when the drill was conducted complex wide and the same strengths and areas of improvements were identified.*

**For multiple IRNs co-located in the same building submitting one after action review instead of three individual ones is being addressed. The New School Safety Plans Application being developed by the Ohio Department of Public Safety will have the option to upload one set of documents for co-located programs (EMTs). This is a functionality issue with the current application.**

*Joseph Villegas with Wayne County Emergency Management Agency provided the following:*

*I would like to comment regarding the proposed outline for Ohio Homeland Security Rule 4501:5-1-01 dealing with requirements for emergency management planning and testing for schools. In my opinion, it is good to have emergency management exercise and evaluation plan in place. However, each county EMA would have to hire an employee to manage this program. Creating an exercise and evaluation program for each school is easily a full time job. There has to be a funding mechanism to make this rule change sustainable.*

**“(E)(2)(e) The test should include at least one representative from law enforcement, fire, EMA, EMS, and/or behavioral mental health provider and public health official.”**

**This means the test should include one representative from the first grouping (law enforcement, fire, EMA, EMS) and one representative from the second grouping (mental health provider and public health official). For example local law enforcement and a mental health provide. Not one representative from each agency. i.e.. Fire, EMA, EMS, law enforcement.**

*Barbara Pittard with Wayne County Emergency Management Agency provided the following:*

1. *The draft I read, on page 4 section (C) (1) made reference to ORC 5502.262 division (B) (6) – I did not find a section (B)(6). (B only has 4 sections. Not sure if it was a typo or if I am reading it incorrectly.*

**This change was made.**

2. *Proposed item (E) (2) states “...administrators shall prepare and conduct at least one annual emergency management test each year during the three year annual review cycle ...” – first “annual” and “each year” are redundant. Then item (E) (2) (b) states they*

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*must do a tabletop, functional or full-scale exercise, each type being used once every three years. These two sections are confusing. Are you trying to say that in a 3 year time period, they must do one of each - a tabletop, functional and full-scale exercise? The way it reads, it almost sounds like in years 1 – 3, they might perform a table top exercise, then years 4 – 6 a functional, then years 7 – 9 a full-scale. I think this should be clarified.*

**This change has been made. The word annual was deleted to make it clearer.**

3. *Section (E) (2) (e) states that the test should include at least one representative from EMA. If these exercises are being done per building per year, we (a staff of 2) will be participating in an exercise almost every week of the year. Will there be funding to hire another person at all 88 county EMAs? This will hugely impact our already overwhelming work load.*

**This means the test should include one representative from the first grouping (law enforcement, fire, EMA, EMS) and one representative from the second grouping (mental health provider and public health official). For example local law enforcement and a mental health provide. Not one representative from each agency. i.e.. Fire, EMA, EMS, law enforcement.**

*Sergeant Chad Smith with the Stark County Sheriff's Office provided the following:*

*I was just reviewing the Ohio homeland security rule. I have been a School Resource Officer assigned to a district for 17 years, first let me say I love the tabletop exercise requirement for the emergency management test. I have been performing more that the required 1 every three years because it opens the eyes of the schools as to where their weaknesses are. The Functional and Full-Scale I feel have loss their usefulness. The 3 positives and 3 things to work on are usually the same year after year. The 3 things to work on that we usually have include training for new staff on emergency procedures. To me this is not the best use of time.*

**No change is made here as Section 5502.262 of the Revised Code required a regularly scheduled test to take place annually.**

*Under section (E) (2) (e) it sounds like you want one rep from each of the following agencies instead of one rep from any of the agencies. Why not just invite reps from all the agencies. Our EMA office only has 4 employees and approx 130 schools in county, that would be a hardship if they were required to be at each EMT.*

**This means the test should include one representative from the first grouping (law enforcement, fire, EMA, EMS) and one representative from the second grouping (mental health provider and public health official). For example local law enforcement**

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and a mental health provide. Not one representative from each agency. i.e.. Fire, EMA, EMS, law enforcement.

*Matthew McCrystal with the Ohio Emergency Management provided the following:  
Our two issues/questions:*

*B(1) “any other natural or man made events” should be changed to “any other natural, technological, or human-caused incidents or events” per federal guidelines in HIRA/THIRA/CPG101 etc.*

**This change has been made.**

*B(1)(a) “The plan shall be compliant with NIMS...” should be “consistent with NIMS principles”; maybe include “per ORC5502.28c*

**This change has been made.**

*One additional comment was provided during internal discussion of the rule:*

*Under (c) – there are some things that could become ‘sticky’*

*It includes parents in the stakeholders, then says that the stakeholders are provided a copy of the plan – there were great arguments way back about not allowing a parent to ‘have’ a copy of the plan because there was no guarantee of who may be able to access a parent’s copy. Could the sentence be changed to “ensures that each stakeholder has an opportunity to review and comment on the plan.” ?*

**This change was has been made.**

**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 considered.**

**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?**

**Section 5502.262 of the Revised Code does not allow for alternative regulations.**

**13. 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.***

**The schools are provided discretion on how to achieve the outcome, but must meet the requirements of the rule.**

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

The rule was transferred from the Department of Education to the Department of Public Safety in House Bill 123 of the 133<sup>rd</sup> General Assembly. A search was completed using RegExplorer that found no other similar regulations.

15. 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.

An evaluator is assigned to each school to evaluate the plans for compliance. The evaluators are trained and meet regularly to discuss how evaluations are applied and how to consistently address new concerns. The Emergency Management Training has an IT application with required points of data. The system is designed so that a school may not be compliant unless data is provided in the required fields.

#### Adverse Impact to Business

16. 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; and  
School buildings operating in Ohio.
- b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,); and  
Staff engagement in compliance will require at least one business day per year.
- 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.*

The only cost associated will be staff time at schools. There is no cost to the program itself. Forms, data collection worksheets and threat assessment is offered free to school from OHS.

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

The Department of Public Safety, Ohio Homeland Security is required to adopt rules pursuant to 5502.262 of the Revised Code, regarding emergency management plans specifying that plan shall be submitted on standardized forms, as well as specify the requirements and procedures for emergency management plan tests.

#### Regulatory Flexibility

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

Division (H)(1) of Section 5502.262 of the Revised Code allows the Director to exempt an administrator if it is determined that the requirements do not apply to a building or buildings under the control of that administrators. Division (H)(2) exempts administrators of online learning schools that are established under Section 3302.42 of the Revised Code, unless students of that school participate in in person instruction instructions that is not otherwise covered by an emergency management plan.

- 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?**

Section 3319.31 (B)(4) states that a school administrator may be disciplined by the Ohio Department of Education for failure to meet Section 5502.262 of the Revised Code. However, the Department of public safety would work with administrators to correct for paperwork violations before any disciplinary proceedings.

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

The Ohio School Safety Program within the Ohio Department of Public Safety, Ohio Homeland Security is available to assist stakeholders with resources and technical assistance.