



# Common Sense Initiative

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

**Sean McCullough**, Director

## Business Impact Analysis

Agency, Board, or Commission Name: Opportunities for Ohioans with Disabilities Agency (OOD)

Rule Contact Name and Contact Information:  
Rick Schanz, 614-545-8964

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

Rule Number(s): 3304:1-21-03, 3304:1-21-04, 3304:1-21-06, 3304:1-21-12

Date of Submission for CSI Review: 05/02/22

Public Comment Period End Date: 05/11/22

**Rule Type/Number of Rules:**

New/     rules

No Change/     rules (FYR?    )

Amended/   4   rules (FYR? No)

Rescinded/     rules (FYR?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 Randolph-Sheppard act provides individuals who are blind with remunerative employment and self-employment through the operation of vending facilities on federal property. Ohio Revised Code Sections 3304.28 through 3304.35 provide the same program on state property.

OOD, through its Bureau of Services for the Visually Impaired (BSVI), is the State Licensing Agency (SLA) for blind vendors through the federal Randolph-Sheppard Act, 20 U.S.C. Ch 6A Sec. 107 and 34 CFR 395 et seq. OOD has promulgated Ohio Administrative Code Chapter 3304:1-21-01 through 3304:1-21-15 through the authority granted OOD and BSVI in Ohio Revised Code sections 3304.15(C)(1), and 3304.29.

BSVI operates the Business Enterprise (BE) program which licenses blind individuals to enter the program and operate vending facilities on state, federal or other property through a “Bureau-Operator Agreement” with the BE program. The BE program secures facilities which the operators can vend by entering into a “Bureau-Grantor Agreement” on state or other property, or a permit on federal property. The BE

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**program provides the facilities, equipment, and initial stocks and supplies to the Operators. The Operators file monthly operating reports with BE and pay a service charge based on these reports.**

**The BE program actively participates with the Ohio Vendors Representative Committee (OVRC) on issues detailed in the administrative rules. The rules also detail licensing of blind vendors, provide for a bidding process to be awarded a vending location, operator performance improvement plan procedure, discipline which may be brought against a licensee and the procedure by which a licensee or the OVRC may file a grievance against the BE program.**

**The changes in the rules do not effect a major change in the program. However, the changes proposed in the rules are an attempt to have the BE program run in a more efficient manner.**

- 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.**

**The Ohio statute that authorizes OOD to adopt the rules is 3304.29(D). The statutes that amplify that authority are 3304.29 (including (A)(B)(C) & (D)), 3304.30, 3304.31 and 3304.34.**

- 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.**

**Yes, 34 CFR 395.4 requires OOD/BSVI to promulgate state regulations.**

**34 CFR 395.4 requires OOD/BSVI to promulgate state rules and regulations that are adequate to assure the effective conduct of the state's vending facility program under the Randolph-Sheppard Act. The current rule package already fulfills this requirement and the proposed amendments continue to fulfill the requirement.**

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

**These rules are enacted pursuant to both federal and state law.**

- 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 regulations detail rules in order to effectively administer the Randolph-Sheppard program in the state of Ohio.**

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

BSVI measures the success of the program through the number of licensed blind vendors and their placement at federal and state locations.

**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 Ohio Vendors Representative Committee (OVRC), representing all licensees, was involved in the promulgation of the rules over a two year period, and voted to endorse the implementation of these rules.

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

BE worked in collaboration with the OVRC in the revision of these rules.

**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 available for use in developing these proposed rules, therefore data support is not applicable.

**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?**

The regulations were in place. The BE program was seeking to improve regulations. The BE program does not have the specific alternatives to consider as the regulations are effective in administering the program, but needed to be updated.

**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.**

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No, OOD is required to license blind vendors and regulate the operation of the program. Blind vendors are independent business owners and make their own business decisions.

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

OOD/BSVI is the sole agency in the state of Ohio that manages the BE program.

**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.**

The BE program is seeking to modernize the rules to effectively assist with the management of the BE program. The BE program regularly engages in active participation with the OVRC on major administrative decisions effecting the program. O.A.C. 3304:1-21-12 lists the items that the BE program is required to actively participate with the OVRC. In addition to actively participating with the OVRC the BE program has guidance and or input from other regulatory agencies, the Rehabilitation Services Administration, the Ohio Attorney General’s Office, the grantors where facilities are located, and other stakeholders.

**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**

Licensees and Operators.

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

Operators must submit a monthly operating report and service charge. The amount of the service charge and the requirement for operating reports are unchanged. There is no increased adverse impact as a result of the proposed rules. Operators are subject to a performance improvement plan and removal from a location for violating the rules.

**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.*

Operator time is needed to bid on a location, and complete monthly paperwork.

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

Required to establish regulations by federal law.

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### **Regulatory Flexibility**

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

No, the regulation is required to be uniformly applied to all operators.

**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?**

The proposed rules do not impose any fines.

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

The BE program provides training to new licensees. BE also offers performance improvement plans to assist operators who demonstrate a pattern of operating facilities in violation of the BE rules.