

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Administrative Services, Equal Opportunity Division

Regulation/Package Title: EDGE RULES

Rule Number(s): 123:2-16-01; 123:2-16-02; 123:2-16-03; 123:2-16-04; 123:2-16-05; 123:2-16-06; 123:2-16-07; 123:2-16-08; 123:2-16-09; 123:2-16-10; 123:2-16-11; 123:2-16-12; 123:2-16-13; 123:2-16-14; 123:2-16-15; 123:2-16-16

Date: June 8, 2015

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Rescinded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.

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

Please see attached EDGE Summary Sheet.

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

R.C. 123.152(B)

3. Does the regulation implement a federal requirement?

No

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

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

N/A

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)?

R.C. 123.152(B) requires that the Department of Administrative Services adopt rules for the administration of the state's Encouraging Diversity, Growth and Equity (EDGE) program. The EDGE program requires the agency to establish annual goals for state agencies, boards and commissions in awarding contracts to businesses that are certified into the program. R.C. 123.152(B)(1). It also requires the agency to provide guidance to state universities and the Ohio Facilities Construction Commission to help them establish procurement goals for contracting with EDGE-certified businesses. R.C. 123.152(B)(14). The program is designed to assist socially and economically disadvantaged businesses in obtaining state government contracts in the following areas: construction, architecture and engineering; professional services; goods and services; and information technology services. R.C. 123.152(B)(2)(b).

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

The Agency is responsible for certifying qualified businesses into the EDGE program. R.C. 123.152(B)(1). Consequently, it will primarily measure (1) the number of applications for certification into the EDGE program, (2) the amount of time it takes for an applicant business to have its application reviewed and processed, and

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(3) the number of qualified businesses ultimately certified into the EDGE program to determine the success of this regulation.

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.

Please see the attached "EDGE Summary Sheet."

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

Stakeholders provided both oral and written comments and revisions to the proposed rule changes, all which were considered by the Agency.

- 9. What scientific data was used to develop the rule or the measurable outcomes of the rule?**

N/A

How does this data support the regulation being proposed?

N/A

- 10. 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 considered various alternative iterations of its rules, each of which were made by multiple stakeholders as a part of the rule-review process. Generally, the reason why any particular alternative iteration of the rule was not ultimately adopted is because either (a) it was inconsistent with the statute, (b) it presented an undue burden on businesses, or (c) it prevented the Agency from effectively and efficiently administering the EDGE program.

- 11. 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 Agency did not consider any "performance-based regulation," which would not have defined the certification process or specified the documents required to ensure eligibility into the program, in order to ensure the certification of only

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those qualified applicants that are contemplated by the statute (see R.C. 123.152(B)(3)).

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

The Agency bears sole responsibility for certifying business into and administering the EDGE program. Thus, there are no other comparable regulations to duplicate.

13. 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 approval and publication of the proposed rules, the Agency intends to begin reviewing and processing applications accordingly, as well as notifying and educating potential applicants about any changes in the process. Coupled with internal policies and management mechanisms, this will help to ensure the regulations are applied consistently and predictably for the regulated community.

Adverse Impact to Business

14. 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;**
- 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.

Altogether, the regulation will require less than a day of any employer’s time to complete the certification application and submit any required documentation to verify eligibility for certification into the EDGE program.

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

In order to ensure compliance with the statute, which requires that businesses be both socially and economically disadvantaged to be eligible for participation into the program, the agency determined that the time necessary to complete the application and submit any substantiating paperwork is justified in order to ensure compliance with the statutory eligibility requirements.

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Regulatory Flexibility

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

No

17. 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?

There are no penalties or fines for paperwork violations.

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

The Agency has numerous employees who are available to assist small businesses comply with the regulation, and holds numerous events and trainings throughout the year all ultimately designed to help small businesses obtain EDGE certification. Additionally, R.C. 122.041 requires the Director of the Development Services Agency to “[c]onduct outreach, marketing, and recruitment of EDGE business enterprises.” Accordingly, the Development Services Agency has Minority Business Assistance Centers throughout the state which provide technical assistance and professional consulting to small, minority-owned, women-owned, and socially and economically disadvantaged businesses.