CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: **Opportunities for Ohioans with Disabilities**

Regulation/Package Title: **Business Enterprise Program**

Rule Number(s): **Chapter 3304:1-21 Part 21**

Date: **July 24. 2015**

Rule Type:

- ☐ New
- X Amended
- X 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- ☐ Rescinded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.**

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.

Opportunities for Ohioans with Disabilities (OOD), through the Bureau of Services for the Visually Impaired (BSVI), is the state 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 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 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 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. Multiple changes fall under a few categories: (1) the agency name change from Rehabilitation Services Commission to Opportunities for Ohioans with Disabilities; (2) a change in definitions and descriptions to reflect other legal definitions; (3) an addition of definitions and descriptions to clarity the rules; (4) moving sections of one rule to another for consistency; and (5) an update of the rules to reflect modern practices in the BE program.

BSVI is also proposing changes to O.A.C. 3304:21-1-10 which is currently titled "operator corrective action." BSVI is changing the title to "Operator performance Improvement." This rule was revised to streamline a more bureaucratic process, simplify the rule, and allow more flexibility for the BE program to develop a performance improvement plan for the operator.

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

(See above)

3. Does the regulation implement a federal requirement?

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

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?

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.

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

   The rules are enacted pursuant to both federal and state law.

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)?**

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

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

   BSVI will measure success of the program through successful employment of blind operators.

Development of the Regulation

7. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

   The Ohio Vendors Representative Committee was initially involved in the proposed revisions to the BE rules. The rules were discussed with the OVRC on several dates including: December 12, 2014; January 29, 2014; and March 20, 2015. A stake holder meeting was held on May 7, 2015 and June 2, 2015. In preparation for the May 7, 2015 stakeholders meeting all licensees were notified of the proposed changes, and invited to attend and/or provide feedback.

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

   Valuable input was provided by the OVRC. A majority of the changes suggested by the OVRC were incorporated into the rule changes.

Rocky Marchiano, managing consultant of public policy and business development for the Randolph-Sheppard Vendors of Louisiana provided suggestions for rule changes. The BE program did not incorporate ant of his proposed suggestions and notified him of such.

The notes from the May 7, 2015 stake holder meeting are attached to this report (attachment A) well as the response to Rocky Marchiano (attachment B). The June 2nd meeting was not attended by stakeholders. The BE program is continuing to work with the OVRC and stakeholders on further suggestions.

9. **What scientific data was used to develop the rule or the measurable outcomes of the rule?** No. **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 regulations were in place. The BE program was seeking to improve the regulations. The BE program does not have specific alternatives to consider as the regulations are effective in administering the program however, needed to be updated.

11. **Did the Agency specifically consider a performance-based regulation? Please explain.** Some of the proposed regulations are performance based. O.A.C. 3304:1-21-03 "Facility announcements, application procedure and selection" proscribes a qualification "points" system detailing how a facility is awarded. O.A.C. 3304:1-21-10 "Operator performance improvement plan" is performance based regulation to assist operators who show a pattern of managing a facility in violation of the BE rules.

12. **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.

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.**

    O.A.C. Chapter 3304:1-21 is an existing rule package. 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 Admiration, the Ohio Attorney General's Office, the grantors where facilities are located, and other stakeholders.

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;
Licensees and Operators.

b. Identify the nature of the adverse impact
Operators must submit a monthly operating report and service charge. While the amount of the service charge is unchanged, BE is moving to an electronic submission of the monthly operating report on October 1, 2016. BE may grant a temporary waiver for this requirement.

c. Quantify the expected adverse impact from the regulation.
The adverse impact is expected to minimal. Many operators currently file their monthly operating report electronically. With proper training and technical support such as telephonic data entry and other voice technology, the transition should not be burdensome.

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

The BE program will be more efficient with electronic submission of monthly operating reports. The elimination of manual reports requiring more data entry will lead to better management of reporting and additional tools for operator business management.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? 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 several instances in which this is written into the code for example:

For a first time violation of OAC 3304:1-21-09(A) (late payment) in a federal fiscal year the operator is only given a notice.

An operator must have "a pattern" of managing a facility in violation of Chapter 3304:1-21 of the Administrative Code to be placed on a performance improvement plan. This contemplates that a single minor first time violation would not be cause for an operator to be placed on a performance action plan.

18. 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 are demonstrate a pattern of operating facilities in violation of the BE rules.

Attachment A

Below is the feedback of the May 7, 2015 Stake holder meeting as provided by Aneesa Locke-Hines.

Meeting: Business Enterprise Program Stakeholder
Regarding: Rules Revision Input
When: May 7, 2015, 10:30 a.m. – 3:30 p.m.
Located: Opportunities for Ohioans with Disabilities
150 West Campus View Blvd
Columbus, Ohio
Commissioners Conference Room

Started at 10:40 due to technical difficulties. Large print and braille prints of draft rules were provided to each participant.

Aneesa opens meeting, stated purpose, indicated she was moderating, reminded field locations that a sign-in sheet is required. Stated lunch break around 11:30 dependent upon comments at that time. She will be present at the Columbus location the entire time. Informed there was a note-taker for record, and explained round robin process to organize comments. People will introduce themselves prior to making their comments. Housekeeping for those present in Columbus. Indicated there are employees for assistance present which include Mindy Duncan, Cynthia lee, Lynn Hustwick, and even a member of legal, if needed.

Provided insight of recent conversations including latest OVRC meeting. Indicates current drafts in hand do not include the language from those conversations. She will give an overview of those changes at this time but will provide the language in the near future.

1. Rule A re: cat tax and related fees
2. Rule 3 re: point distribution – 4 points, striking items
3. Rule 4 re: records review
4. Rule 8 additional language to support moving operators to a non-paper format of reporting
5. Active participation in performance improvement plan

Agency response to stakeholder feedback:

1. The DRAFT made available for the stakeholder meeting did not reflect the conversations and conclusions reached during the special meeting with OVRC on April 29 2015. The DRAFT containing the conclusions from that discussion was not available.

Open floor for comment. Goal is to receive public comment, note them, and respond in writing at a later date. Today will not be for discussion or response from the program.

Toledo – Bob Yeager
Technical difficulty, then no one present

Cincinnati – Tonia Koo
Frank Bragrassa – passing for the moment, since they had technical difficulty and just got connected

Cleveland – Kelsi Burrier
No one present

Zanesville – Chris Estep
No one present

Dayton – Tom Miller

Derek Neufarth – Encouraged by the demonstration of the bureau to listen to the comments of the operators and committee. Believes we are on the right track. Does have some concern that the language is not in the operator's hands or that today's conversation is beneficial. Copy of final draft needs to be in the hands of the operators as soon as possible. Not that we need another meeting but that we need the final and an opportunity to make addition comment. Would like to thank everyone involved in this three-year process. New BEP folks have done exceedingly well in getting caught up and in getting this done. This is probably one of the best rules package we have ever had. People on the committee have sacrificed a great amount of personal time to make this happen, I thank them also.

Agency response to stakeholder feedback:

1. The DRAFT made available for the stakeholder meeting did not reflect the conversations and conclusions reached during the special meeting with OVRC on April 29 2015. The DRAFT containing the conclusions from that discussion was not available.

Canton – Tim Tuberty
No one present

Columbus – Aneesa Locke-Hines
John Diakogeorgio – The rules regarding records review after one year and then three years thereafter recommends having it after 6 months and then every three years thereafter in order to find mistakes sooner.
Agency response to stakeholder feedback:

1. Recommendation taken into consideration. New Licensees will be provided technical support through a number of avenues. Holding a records review every 6 months may be cumbersome

for the licensee and staff. Also 6 months does not give the operator sufficient time to cure the issue and show ongoing progress.

Mike Russell – Stated disagreement with agent being an option to support the records review process. He was under the impression that the agent would only be used to support plans of corrective action (performance improvement plans). Expressed concern about the cost and stated this is not a good use of bureau's funds. Expressed that he needs clarification for when to get an agent.

Agency response to stakeholder feedback:

1. The use of the term agent is not expected to be a cost to the program as it will be a state resource used.

Julie Russell – I like rules package and just have a comment about the OBG part. Some want to go to OBG but we need samples and trial use in order to help people migrate without fear of penalties.

Agency response to stakeholder feedback:

1. The BE training Manager will devise a training program to provide support for transitioning operators.

Annette Lutz, Chair of OVRC – Thanks everyone for participation on this long process. Despite how long the process has taken, has concerns of the fast track pace of these rules being out for public comment, of changes that have not been posted for people to see. She hopes that when the final draft is out to all that there will be an opportunity for comment before moving forward. Specifically, to review some items that were discussed recently that she hopes were not being thrown out but simply an oversight from Aneesa's opening conversation summarizing those changes which include: seniority language, paying net proceeds to bureau when on fee, and reimbursements on inventory adjustments.

Aneesa indicated not in response to Annette but as clarification on the summary she previously provided were those items consider to be the most substantial changes, given the 2 highlighted discussion. It was noted that there are additional logistical changes and minor changes to the draft and encouraged everyone to read in its entirety once the revised draft is posted.

Aneesa introduced Ted Kleckler from the OOD Legal Department – Ted indicates this stakeholder meeting for public comment certainly is not the end of public comment. What we have been doing is working with the OVRC through several versions of revisions. The version on the internet is the version after the OVRC meeting. The public meetings are not required by law but we do it because we value public opinion. We are currently in the stakeholder development stage. The purpose is to gain valuable input to arrive at a good end result. We will gather the information from today, evaluate the comments, and then a reporting for the Common Sense Initiative. We will file with the Common Sense Initiative.

CSI establishes the criteria for effective stakeholder input for rule development. Then after CSI provides us feedback, there will be notification of the submitted draft with a comment period. We do an impact analysis to CSI, they respond, we respond, then we go before the joint committee on rule review and 30-45 days later will be a public hearing with a hearing officer and transcriptionist. A hearing officer report will recommend going forward or not for JCAR submission of the rule changes. There is another opportunity there, if public comment is needed before that committee. Assuming rules pass the JCAR committee, we can then implement the rules in 11 days. Today's meeting is certainly not the end of comments. Just wanted to explain how the stakeholder process works with rule changes.

Round robin at 11:25:

Toledo – Bob Yeager - No one present
Cincinnati – Tonia Koo - No comment at this time
Cleveland – Kelsi Burrier - No one present
Zanesville – Chris Estep - No one present
Dayton – Tom Miller - No one additional
Canton – Tim Tuberty - No one present
Columbus – Aneesa Locke-Hines - Any additional comments - No

Staff in the field may break for lunch but Columbus will stay on and we will resume at 12:00.

Round robin 12:10:

Toledo – Bob Yeager - No one present
Cincinnati – Tonia Koo - No comment at this time
Cleveland – Kelsi Burrier - No one present
Zanesville – Chris Estep - No one present
Dayton – Tom Miller - No one present
Canton – Vicki Smith - No one present
Columbus – Aneesa Locke-Hines - Any additional comments - No

Will check back at 12:30 but if someone arrives please IM or email Aneesa or Cynthia.

Round robin 12:31:

Toledo – Bob Yeager -No one present
Cincinnati – Tonia Koo - Technical difficulties, checked via email. No comment at this time.
Cleveland – Kelsi Burrier - No one present
Zanesville – Chris Estep - No one present
Dayton – Tom Miller - No one additional
Canton – Vicki Smith - No one present
Columbus – Aneesa Locke-Hines - Any additional comments - No

Will check back at 1:15 but if someone arrives please email Aneesa or Cynthia.

Round robin at 1:18:

Toledo – Bob Yeager - No one present
Cincinnati –Bill Ratcliff - No one with comments
Cleveland – Kelsi Burrier - No one present
Zanesville – Chris Estep - No one present
Dayton – Tom Miller - No one additional
Canton – Vicki Smith - No one present
Columbus – Aneesa Locke-Hines - Any additional comments - No

Will check back at 2:00 but if someone arrives please email Aneesa or Cynthia.

Round robin at 2:02:

Toledo – Bob Yeager - No one present
Cincinnati –Bill Ratcliff - No one with comments
Cleveland – Kelsi Burrier - No one present
Zanesville – Chris Estep - No one present
Dayton – Tom Miller - No one present
Canton – Vicki Smith - No one present
Columbus – Aneesa Locke-Hines – No one present

Will check back at 3:00 but if someone arrives please email Aneesa or Cynthia.

Round robin at 3:04:

Toledo – Bob Yeager - No response
Cincinnati –Bill Ratcliff - No one present via Lync
Cleveland – Kelsi Burrier - No one present via Lync
Zanesville – Chris Estep - No one present via Lync
Dayton – Tom Miller - No response
Canton – Vicki Smith - No one present via Lync
Columbus – Aneesa Locke-Hines – No one present

Will check back at 3:30 but if someone arrives please email Aneesa or Cynthia.

Round robin at 3:30:

Toledo – Bob Yeager - No one present
Cincinnati –Bill Ratcliff - No one present
Cleveland – Kelsi Burrier - No one present
Zanesville – Chris Estep - No one present
Dayton – Todd Heitkamp – No one present
Canton – Vicki Smith - No one present
Columbus – Aneesa Locke-Hines – No one present

This concludes the meeting for public comment

Attachment B

The following is a response from Aneesa Locke-Hines BE program manager to Rocky Marchiano on July 10, 2015. Ms. Lock-Hines copied Mr. Marciano's letter and provided responses to each of his suggestions.

Mr Miller:

The Randolph-Sheppard Vendors of America, through our Ohio affiliate, represent a number of blind vendors participating in Ohio's Business Enterprise Program. On behalf of our Ohio affiliate we have reviewed the state's proposed rulemaking for 3304: 1-21-12 and have the following comments and observations to be made part of the public record for the May 7, 2015 public hearing.

Item 1

3304: 1-21-01 Definitions (B) Active Participation

Edit definition to the following:

"Active participation means an ongoing process of good-faith negotiations between the BSVI and the Ohio Vendors Representative Committee to achieve joint planning of policies, procedures, rules, standards, regulations, and budgets affecting the overall operation of the Business Enterprise Program. Active participation shall be undertaken by BSVI and OVRS prior to the implementation of any policy, procedure, rule, standard, regulation, and budget by the BEP. Active participation shall include the requirements set forth in 34 CFR 395.14(b)(1)(3)(4)."

The current language is insufficient to safeguard the active participation rights of the OVRC and therefore insufficient to protect the rights of program participants. Proposed language enhances the definition of active participation to insure sufficient safeguards for OVRC and program participants.

Response: The definition of active participation was mutually established in prior rule revisions with the Ohio Vendors Representative Committee (OVRC). The process of active participation is carried out public discussion during OVRC public meetings.

Item 2

3304: 1-21-01 Definitions (C) Agent

Delete definition.

The appointment of agents by the BE and/or the State of Ohio to perform BE functions creates an unsafe and suspect environment for program participants. The definition language allows the fullest discretion to BE in the appointment of an agent thus BE may appoint agents unskilled or inexperienced in the nature of assisted employment and vocational rehabilitation of the blind and/or visually impaired. BE employees should be the sole agents of the BE. If the State of Ohio wishes to appoint an agent on behalf of BE the transition to a Nominee Agency would be an acceptable alternative.

Response: The identified function of the term agency in the proposed rule package is not to allow an agent to carry out the duties of the Business Enterprise Consultant staff, but to provide a higher level of knowledge and skills related to a fiscal records review to provide better support and education to the operator, if the operators situation requires a skill set beyond that of a BE Consultant staff.

Item 3

3304: 1-21-01 Definitions (E) BSVI

Add language.

The language should include which agency is the Designated State Unit (DSU), which agency is designated by the Secretary of Education as the State Licensing Agency and, which agency is responsible for the submission of the State Plan.

Response: The DSU is identified in the proposed rules as Opportunities for Ohioans with Disabilities (OOD), formally Ohio Rehabilitation services Commission (ORSC). BSVI is not the DSU.

Item 4

3304: 1-21-01 Definitions (HH) Professional Manner

Edit language.

"Conduct which is consistent with and adheres to BE Program Standards."

The proposed definition is subjective. The above definition utilizes Program Standards as a measure of professional conduct.

Response: The additional language to the present definition of Professional Manner reduces the subjectivity with the current rule definition.

Item 5

3304: 1-21-01 Definitions (II) Records Review

Add language

"Notice of Records Review must be given in the operators' preferred format within 90 days of the proposed Records Review"

Proposed language is vague and does not provide the blind vendor with sufficient notice nor notice in their preferred reading format.

Response: The proposed language has been revised based on feedback from Ohio stakeholders, including the OVRC.

Item 6

3304: 1-21-08 Reporting Service Charges, and Co-Pay

Edit language.

(A)(1) "Electronic submission shall be optional for all operators."

Proposed language mandates electronic submission or all operators while not all operators have been trained on electronic submissions, operations of computers, nor trained on software systems. Neither has the state provided all operators with a laptop to fulfill the electronic submission requirement.

Response: The proposed language has been revised based on feedback from Ohio stakeholders, including the OVRC. The requirement to submit monthly operating reports electronically remains, however an adequate time period is in place to support training.

Item 7

3304: 1-21-15 Method for Notice of Public Hearing

Add language.

"(B)(8) All notices to blind vendors shall be written and mailed to each blind vendor according to the preferred reading method of that blind vendor."

Proposed language does not consider that public hearing interested parties may have visual disabilities.

Response: The language in rule address the “preferred reading method of the blind vendor. Ohio vendors are communicated with in their preferred method on file with BE.

Mr Richard Byrd will be at the Public Hearing to present these concerns for the record. A copy of this letter has been forward the Commissioner of Rehabilitation Services as well as the Secretary of Education.

Sincerely,

/Rocky Marchiano/