

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 123:2-14-02

**Rule Type:** New

**Rule Title/Tagline:** Certification criteria.

**Agency Name:** Department of Administrative Services

**Division:** Division of EEO for Construction

**Address:** 30 East Broad Street Suite 4023 Columbus OH 43215

**Contact:** Paul A. Russell **Phone:** 614-644-1773

**Email:** paul.russell@das.ohio.gov

#### **I. Rule Summary**

1. **Is this a five year rule review?** No
  - A. **What is the rule's five year review date?**
2. **Is this rule the result of recent legislation?** Yes
  - A. **If so, what is the bill number, General Assembly and Sponsor?** HB 494 - 132  
- Representative Niraj Antani
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** R.C. 123.151, 123.152, 123.154
5. **What statute(s) does the rule implement or amplify?** R.C. 122.71(E), R.C. 123.151, 123.152, 123.154
6. **What are the reasons for proposing the rule?**

As the result of a review of the existing Minority Business Enterprise program and the Encouraging Diversity, Growth and Equity program, and in order to implement the new Women-owned Business Enterprise program, the Agency is adopting new rules that will govern all three programs. The new rules address issues within the existing rules that were identified by the Agency and by stakeholders. One of the goals was consistency in the regulation of all three programs. Another goal was to strengthen

the agency's ability to ensure that certified businesses perform a commercially useful function and are not simply pass-thru entities that allow non-eligible individuals or businesses to receive the economic benefits of the certification. The Agency also seeks to improve its ability to conduct business compliance reviews during the entire certification period to ensure that certified businesses remain in compliance with all rules throughout the entire certification time period.

**7. Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

Ohio Adm. Code 123:2-14-02 provides the certification criteria for the existing Minority Business Enterprise program and the Encouraging Diversity, Growth and Equity program, and the new Women-owned Business Enterprise program. The rule outlines the certification process; certification criteria requirements for different business structure types, including factors relevant to establishing ownership and control of the business; certain responsibilities of a certified business; the length of the certification period; information to be submitted with an application; and criteria used when determining control, independence, and ownership for certification into the MBE, EDGE, and WBE programs.

**8. Does the rule incorporate material by reference? Yes**

**9. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.**

A citation to a federal regulation in the Code of Federal Regulations is exempt pursuant to R.C. 121.75(A)(2)(e). The Code of Federal Regulations is available online through [govinfo.gov](http://govinfo.gov).

**10. If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

The revised rule contains a change in 123:2-14-02(M) to moderate the prohibition on doing business with certain related entities from a complete prohibition to a prohibition on doing business nearly exclusively with certain related entities.

The revised rule also contains a new section 123:2-14-02(W) to carry forward a provision from the existing MBE rule, Rule 123:2-15-01(D), which requires the agency to maintain a list of all MBE-certified businesses and make that list available to all contracting authorities.

## **II. Fiscal Analysis**

- 11. Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.**

This will have no impact on revenues or expenditures.

0.00

Not applicable

- 12. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

The rule impacts businesses and business owners applying to become an MBE, EDGE, and/or WBE-certified business, or those businesses seeking recertification in these programs.

To apply for certification or re-certification, a business owner completes an application, collects and submits documents, and participates in an on-site interview. The time to complete these processes will vary, primarily depending upon the organization of the business's records. The Agency estimates that the average time to complete an initial application ranges from five to ten hours. This is the average time commitment based on businesses and business owners that have applied for MBE and EDGE certification. The actual cost to a specific business owner would then depend upon the cost attributable to the time of that particular owner and/or staff.

- 13. Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No**
- 14. Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No**
- 15. If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.**

Not applicable

## **III. Common Sense Initiative (CSI) Questions**

- 16. Was this rule filed with the Common Sense Initiative Office? Yes**
- 17. Does this rule have an adverse impact on business? Yes**

- A. Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? No
- B. Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? No
- C. Does this rule require specific expenditures or the report of information as a condition of compliance? Yes

The rule requires the completion of an application and the submission of documents to obtain certification.

- D. Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? No

**IV. Regulatory Restrictions (This section only applies to agencies indicated in R.C. 121.95 (A))**

18. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? Yes

- A. How many new regulatory restrictions do you propose adding? 11

123:2-14-02(I) All certified businesses shall notify the Agency within 30 days of changes in circumstance.

123:2-14-02(I) A material change requires the submission of a new application.

123:2-14-02(L) A business must be in business for at least twelve months prior to certification.

123:2-14-02(M) A certified business is prohibited from conducting business with non-eligible members or their members.

123:2-14-02(N) A non-eligible member or owner of the business may not provide a loan to the business.

123:2-14-02(O) A business requesting certification must disclose all financial arrangements.

123:2-14-02(P)(4) The eligible owners' contributions of capital must be real and substantial.

123:2-14-02(P)(5) The eligible owners must have the experience, expertise, and knowledge to operate the particular type of business requesting certification.

123:2-14-02(Q)(4) If a business was formerly owned and controlled by non-eligible individuals, the eligible owners must demonstrate that the transfer of ownership was made for reasons other than obtaining certification.

123:2-14-02(Q)(8) If state or local law requires the eligible owners to hold a license or credential, the eligible owner must possess the license or credential.

123:2-14-02(S) Details the information that an applicant shall provide to the Agency.

**B. How many existing regulatory restrictions do you propose removing? 0**