



Common Sense Initiative

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Business Impact Analysis

Agency, Board, or Commission Name: Department of Development

Rule Contact Name and Contact Information:

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

Broadband Expansion Grant - Original

Rule Number(s): 122:30-1-01; 122:30-1-02; 122:30-1-03; 122:30-1-04; 122:30-1-05

122:3-1-06; 122:30-1-07; 122:30-1-08; 122:30-1-09

Date of Submission for CSI Review: August 23, 2021

Public Comment Period End Date: September 6, 2021

Rule Type/Number of Rules:

New/ 9 rules

No Change/ ___ rules (FYR? ___)

Amended/ ___ rules (FYR? ___)

Rescinded/ ___ rules (FYR?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

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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.

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):

- Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- Requires specific expenditures or the report of information as a condition of compliance.**
- 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 proposed rules 122:30-1-01 through 122:30-1-09 establish the application, application process, award of grants process and application for solicitation of eligible projects on behalf of a county for the Ohio Residential Broadband Expansion Program.

- 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 Department of Development is required to adopt rules for the administration of the program by Revised Code 122.4077 and the Revised Code 122.40 through 122.4077 set out further rule requirements and amplify the areas to which Development is required to create procedures for by rule.

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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.

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)?**

Development is required by Revised Code 122.4077 to adopt rules for the administration of the Ohio Residential Broadband Expansion Grant Program

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

Revised Code 122.407 sets forth tracking items for applications and awarded grants.

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 Department of Development sent the initial draft of the rules to the Ohio Telecom Association, the Ohio Cable Telecommunications Association, the Wireless Internet Service Provider Association, and the Ohio Insurance Institute.

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

The Ohio Telecom Association provided detailed comments and suggestions for the rules as well as other aspects of the grant program. Many of these suggestions were accepted and are a part of this rule as submitted. The Ohio Insurance Institute offered a suggestion to incorporate a surety bond requirement into the rules. While the requirement was not added to

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the rules, language was added to the rule that addresses when the program authority should require a surety. The Wireless Internet Service Providers Association responded that they had no suggestion for the draft, and the Ohio Cable Telecommunications Association did not respond.

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 used to develop the measurable outcomes of the rule. The measurable outcomes of the Ohio Residential Broadband Expansion Grant are relatively laid out in the statute itself.

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 agency considered whether a surety bond or performance bond should be required of all recipients of a grant. Originally, the rules did not mention anything about a surety requirement. Upon considering the language in the statute, which is permissive, and talking with other interested parties, it was determined that the rule should reflect the permissive nature of the statute, and not require the bond in all cases.
- The agency considered whether to change the definition of economic feasibility. However, the alternative definition would have put less emphasis on how much of the broadband funding gap the applicant had been able to obtain as opposed to the size of the project playing a part in the equation, which is why the current definition was chosen
- The agency considered whether to require a challenging provider to not only certify that it understands the possibility that it could be required to pay the funding gap to the state if it fails to build a proposed network, but also whether the challenging provider should be required to certify that it has received notice that a challenge has been accepted. While these are not part of the statute specifically, the statute provides the authority with the ability to require that a challenger that fails its obligation to build a proposed network to pay the amount of the broadband gap back to the state. As a result, the certification and notice provisions were ultimately decided upon, to make sure that a challenging provider understood that this was a possibility.
- The agency considered what constituted a breach of the grant agreement. Originally the rules would have required that any breach of the grant agreement would have resulted in termination of the agreement. Upon consideration of stakeholder

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feedback, this was changed to reflect that it needed to be a material breach of the agreement, and a right to cure was also added.

- 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 rules themselves do not require a specific methodology in building a proposed network. It allows the broadband provider applicant to make determinations as to how it will proceed with the project independent of the authority or the agency. As such, these regulations are performance based.

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

Prior to the adoption of House Bill 2 from the 134th General Assembly, there was no legislation that otherwise created a broadband grant in the state of Ohio. As this is a brand new program and the rules are in response to that program, they are not duplicative of existing rules.

- 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 agency will work together with the established Broadband Expansion Program Authority to ensure that all applications for the grant are treated the same. The authority and the agency will work hand in hand to make sure that these rules are applied predictably and consistently across the board for each possible funding round.

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**
- b. Identify the nature of all adverse impact (e.g., 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.

The impacted business community are internet service providers that either participate in the grant process or the challenge process. The Adverse Impact to the business community

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can come in two different ways. The first is the impact of receiving a grant and failing to comply. The second is challenging a grant application and basing that challenge specifically on the proposal that the challenger will provide broadband into that area over the next two years. In both of these circumstances, the provider may be required to pay back the broadband funding gap to the state.

These dollars are difficult to quantify, as each grant will be requesting different dollar amounts. The broadband funding gap may be small or large, depending upon the location of the project and its scope.

There are also reporting requirements for entities that receive a grant. Compliance with the reporting requirements is not anticipated to involve any expenditures

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

The statute specifically authorizes requiring providers to pay back the grant as a means to make sure that applicants follow through on their applications and that challengers that have not yet completed networks do so in a timely fashion and do not challenge projects indiscriminately to halt broadband progress.

Regulatory Flexibility

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

Yes. The language is permissive and allows the authority to make the determination as to whether the funds should be repaid.

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 rules do not impose fines for paperwork violations.

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

BroadbandOhio and the Department of Development will assist companies in complying with the application process for the grants as well as the challenge process.