

Clearinghouse Rule 11-004

**PROPOSED ORDER OF THE
DEPARTMENT OF COMMERCE**

CREATING RULES

The Wisconsin Department of Commerce proposes an order to create Comm 103 relating to certification of disabled-veteran-owned businesses, and affecting small businesses.

Rule Summary

1. Statutes Interpreted.

Section 560.0335, as created in 2009 Wisconsin Act 299.

2. Statutory Authority.

Sections 227.11 (2) (a) and 560.0335 (4).

3. Explanation of Agency Authority.

Section 227.11 (2) (a) of the Statutes authorizes the Department to promulgate rules interpreting the provisions of any Statute administered by the Department. Section 560.0335 (4) directs the Department to promulgate rules for certifying disabled-veteran-owned businesses.

4. Related Statute or Rule.

Chapters Comm 104 and 105 contain the requirements for the Department's Woman-Owned Business Certification program and Minority Business Certification program, respectively. Although the statutory directives for those two programs differ somewhat from the statutory directives for certifying disabled-veteran-owned businesses, many of the best practices that the Department has developed in those two programs are extrapolative to certifying disabled-veteran-owned businesses.

5. Plain Language Analysis.

The proposed rules primarily specify (1) which businesses are eligible for becoming certified in this program; (2) how to apply for certification and recertification; (3) how the certifications will be issued, renewed, and rescinded; and (4) how to appeal a decision by the Department. Parameters are also included for recognizing equivalent certifications that are issued by other public agencies.

6. Summary of, and Comparison With, Existing or Proposed Federal Regulations.

Title 13 of the Code of Federal Regulations, Part 125, Subparts A thru E, address the definitions, eligibility requirements, contracting requirements, protest procedures, penalties, and records retention requirements under the federal Small Business Administration's Service-Disabled Veteran-Owned (SDVO) Small Business Concern (SBC) program. The purpose of the SDVO SBC program is to assist these businesses in obtaining a fair share of federal-government contracts, subcontracts, and property sales. An SDVO SBC is one in which at least 51 percent of the business is owned, controlled, and actively managed by service-disabled veterans – or in the case of a veteran with a permanent and severe disability, a spouse, surviving spouse, or permanent caregiver of the veteran. The SDVO SBC must also meet the small-size standards corresponding to the federal North American Industry Classification System code assigned to a contract at the time of the contract offer. Verification eligibility is for a 12-month period.

Title 38 of the Code of Federal Regulations, Part 74, addresses the application guidelines, oversight, and records management requirements of the U.S. Department of Veterans Affairs Center for Veterans Enterprise (CVE) VetBiz Vendor Information Pages (VIP) database. Eligibility for the CVE VIP is based on the type of ownership and control, and the absence of (1) debarment or suspension concerns, (2) false application statements, and (3) significant unresolved financial obligations to the federal government. Applications for the VetBiz VIP verification status must be filed electronically in the VIP database located at www.VetBiz.gov.

7. Comparison With Rules in Adjacent States.

An Internet-based search of state-level rules in Minnesota, Iowa, Illinois, and Michigan revealed the following information relating to certification of businesses that are owned by disabled veterans.

Minnesota

Minnesota offers a targeted-group procurement program to help remedy the effects of past discrimination against members of targeted groups. To be considered under the program, a business must be designated as a targeted business by the Minnesota Commissioner of Administration. The criteria for this designation are included in chapter 1230 of the Minnesota Administrative Rules. This chapter addresses certification of small, targeted-group businesses that are at least 51-percent owned and operationally controlled on a day-to-day basis by socially disadvantaged persons, which by definition include individuals with a physical impairment that substantially limits one or more major life activities. This chapter is also similar to the rules proposed in chapter Comm 103 in addressing the application process; documentation of majority ownership and control; issuance or denial of the credential; and use of either an informal review or a statutory, contested-case hearing process for appeals. The rules proposed in chapter Comm 103 differ by applying more narrowly to only veterans with disabilities, and by not being limited to just small businesses.

Iowa

Chapter 54 of the rules of the Iowa Department of Economic Development establishes a targeted, small-business procurement program for promoting the growth, development, and diversification of small Iowa businesses that are owned by minorities, women and persons with disabilities. Chapter 55 of the rules of that Department establishes a targeted, small-business financial assistance program to assist women, minorities, persons with disabilities, and low-income individuals in establishing or expanding small business ventures in Iowa. Prior to

participation in either of these two programs, a business must be certified as a targeted small business under chapter 25 of the rules of the Iowa Department of Inspections and Appeals. Under the definitions in that chapter, a targeted small business (1) is 51-percent or more owned, operated, and actively managed by minorities, women, or persons with disabilities; (2) is located within the state; (3) has an annual gross income of less than \$4 million; and (4) is operated for profit. The certification rules in the chapter are similar to the rules proposed in chapter Comm 103 in addressing the application process; documentation of majority ownership and control; issuance or denial of the credential; on-site audits by the Department; decertification; recertification; and use of a statutory, contested-case hearing process for appeals. The rules proposed in chapter Comm 103 differ by applying more narrowly to only veterans with disabilities, and by not being limited to just small businesses.

Illinois

Title 44, Part 10 of the Illinois Administrative Code implements the Business Enterprise for Minorities, Females, and Persons with Disabilities Act (30 ILCS 575). This Act establishes a goal that at least 12 percent of contracts awarded by state agencies subject to the Act be awarded to businesses which are owned and controlled by minorities, females, or persons with disabilities. These businesses typically cannot have gross sales over the previous three years of \$31.4 million or more, including sales from any affiliates. The Act also allows for certain special treatment in contracting with certified businesses; and establishes a Council, Secretary, and, in the Department of Central Management Services, a program function to implement and oversee the Act. Section 10.30 of Part 10 addresses the roles of the State agencies and the Council in achieving compliance with the contract-awarding goals. Under section 10.50, only certified businesses are eligible for the benefits of the Business Enterprise program, and state agencies can count only those expenditures with a certified vendor, or subcontractor, toward meeting the contract-awarding goals. The certification rules in sections 10.50 to 10.72 are similar to the rules proposed in chapter Comm 103 in addressing the application process, documentation of majority ownership and control, issuance or denial of the credential, consideration of certification by another entity, reconsideration, decertification, appeals, and recertification. The rules proposed in chapter Comm 103 differ by applying more narrowly to only veterans with disabilities, by not being limited to just small businesses, and by not accepting certifications from private-sector entities.

Michigan

No information was found relating to certification of disabled-veteran-owned businesses.

8. Summary of Factual Data and Analytical Methodologies.

The data and methodology for developing these proposed rules were derived from and consisted of incorporating the criteria in section 560.0335 of the Statutes; incorporating many of the best practices the Department has developed in its current, similar programs for certifying minority-owned businesses and woman-owned businesses; and reviewing Internet-based sources of related federal, state, and private-sector information.

9. Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of an Economic Impact Report.

The primary document that was used to determine the effect of the rules on small business was 2009 Wisconsin Act 299. This Act requires the Department to promulgate rules for certifying

disabled-veteran-owned businesses. However, this Act does not require these businesses to become certified, and the proposed rules do not require this certification.

10. Effect on Small Business.

The proposed rules are not expected to impose a negative effect on small business, because the rules only address applying for, receiving, and maintaining voluntary credentials.

11. Agency Contact Person.

Aggo Akyea, Wisconsin Department of Commerce, Division of Business Development, 201 West Washington Avenue, Madison, WI, 53703; telephone: (608) 261-7729; e-mail: aggo.akyea@wi.gov.

13. Place Where Comments Are to Be Submitted, and Deadline for Submission.

Comments on the proposed rules may be submitted by e-mail to sam.rockweiler@wi.gov, no later than February 18, 2011. If e-mail submittal is not possible, written comments may be mailed, by the same date, to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708-0427.

File reference: Comm 103/rules analysis PH