

STATEMENT OF SCOPE

Department of Workforce Development

Rule Nos.:

DWD 60

Relating to:

The business enterprises operated by blind persons.

Rule Type: Permanent

Detailed Description of the Objective of the Proposed Rule

The objective of the proposed rule is to revise the rules in DWD 60 regarding the business enterprise program (BEP) which is administered by the Department of Workforce Development's Division of Vocational Rehabilitation (DVR) in the Department of Workforce Development. The BEP supports blind persons in operating vending, food service, and other small for-profit business enterprises on federal and state property. The objectives of the revisions are to do the following: a) allow DVR to consider geographic proximity in matching blind persons with properties; b) specify a process for DVR to collect certain past due amounts; c) clarify requirements for resolving grievances; d) clarify the qualifications for serving on a committee that participates in administering the BEP; e) identify how DVR can use a nonprofit agency or organization to assist in administering the BEP; f) explore options for ensuring that blind persons are given a priority on federal and state properties; and g) remove outdated references.

Description of Existing Policies Relevant to the Rule, New Policies Proposed to be Included in the Rule, and an Analysis of Policy Alternatives

Chapter DWD 60:

This chapter sets forth requirements for DVR to administer the BEP. For business enterprises on federal and certain other properties, DVR is designated as a State Licensing Agency (SLA) under the Randolph-Sheppard Act by the Rehabilitative Services Administration (RSA) of the US Department of Education. As an SLA, DVR must comply with federal regulations under the Randolph-Sheppard Act. The chapter includes requirements for DVR to select locations that are suitable for business enterprises, establish business enterprises at those locations, grant licenses to blind persons who are eligible to operate the business enterprises, and select business enterprise operators from among the licensees. A new policy in the proposed rule would allow DVR to consider geographic proximity in selecting business enterprise operators. The chapter also requires DVR to collect a percentage of a business enterprise's net proceeds, which is called a set-aside, to help fund the BEP. A new policy in the proposed rule would identify processes for DVR to collect past-due set-asides. In the rule making, DVR will also explore options for ensuring that BEP licensees are given in a priority to operate business enterprises on federal and state properties. In addition, DVR will remove any outdated references in the chapter.

The chapter includes procedures for DVR to resolve grievances about the BEP. If a person is not satisfied with DVR's resolution of a grievance, the chapter allows the person to file a complaint with the US Department of Education for arbitration. A new policy under the proposed rule would allow filing of arbitration complaints with the US Department of Education only for grievances that are eligible for arbitration under the federal regulations, which are grievances involving business enterprises on federal property or businesses enterprises on nonfederal property that are established or operated with funds derived from business operations on federal property.

As required under the Randolph-Sheppard Act, the chapter creates an elected committee of licensees that participates in administration of the BEP. A new policy under the proposed rule would clarify that only blind persons who actively operate a business enterprise under the BEP are eligible to serve on that committee.

The federal regulations allow DVR to enter into an agreement with a nonprofit agency or organization, which is called a nominee agency, to assist in the administration of the BEP. The current chapter does not address details for agreements with nominee agencies. The proposed rule would identify provisions and parameters for DVR to make agreements with nominee agencies.

The alternative to the proposed rule is to do nothing, which would hinder DVR's ability to expand opportunities under the BEP and to administer the BEP in an efficient manner.

Chapters DWD 60:

Section 227.11 (2) (a), Stats.: "Rule-making authority is expressly conferred on an agency as follows: Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute...."

Chapter DWD 60:

Section 47.03 (4) (b), Stats.: "The department may charge a portion of the expenses of its supervised business enterprise program to the net proceeds of each business operating under the program. The department shall establish the procedure for setting these charges by rule, with the participation of a committee of blind vendors established under 20 USC 107b-1."

Section 47.03 (8), Stats.: "A blind person participating in the supervised business enterprise program who is aggrieved by an act or omission of the department may commence a grievance proceeding under rules promulgated by the department."

Section 103.005 (1), Stats.: "The department shall adopt reasonable and proper rules and regulations relative to the exercise of its powers and authorities and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings."

Estimate of Amount of Time that State Employees Will Spend Developing the Rule and of Other Resources Necessary to Develop the Rule

The estimated time is 200 hours.

List with Description of All Entities that May Be Affected by the Proposed Rule

Individuals who apply for or receive vocational rehabilitation services from DVR, blind persons and other persons who operate business enterprises, and federal and state agencies that manage properties.

Summary and Preliminary Comparison with Any Existing or Proposed Federal Regulation that is Intended to Address the Activities to be Regulated by the Proposed Rule

Chapter DWD 60:

As an SLA under the Randolph-Sheppard Act, DVR administers the BEP for business enterprises on federal and certain other property. The Randolph-Sheppard Act uses the term "vending facility" to refer to a business enterprise. The Randolph-Sheppard Act requires an SLA to establish procedures for resolving grievances and allows a person dissatisfied with an SLA's resolution of a grievance to apply to the US Department of Education to arbitrate the dispute. 20 USC 107b (6), 107d-1 (a), and 107d-2. Under the federal regulations, the grievance and arbitration procedures apply to disputes involving vending facilities on federal property or other property. See 34 CFR 395.13 (a) (referring to "vending facility program") and 34 CFR 395.1 (p) (defining "program"). The federal regulations define "other property" as non-federal property on which vending facilities are established or operated with funds derived from vending facilities on federal property. 34 CFR 395.1 (n). The Randolph-Sheppard Act also requires SLAs to establish an elected committee of blind licensees. 20 USC 107b-1 (2) and (3). See also 34 CFR 395.14. Federal regulations under the Randolph-Sheppard Act allow SLAs to enter into agreements with nominee agencies. 34 CFR 395.15 (a).

Anticipated Economic Impact of Implementing the Rule (Note if the Rule is Likely to Have a Significant Economic Impact on Small Businesses)

If the Department is able to revise ch. DWD 60 to ensure that blind persons are given a priority to operate business enterprises on federal and state properties, then the blind persons who operate those business enterprises will be less reliant on benefit programs and the revision will have a positive economic impact. The proposed revisions to ch. DWD 60 are not otherwise expected to have an economic impact on businesses, including small businesses, as defined in s. 227.114 (1), Stats.

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