
Report From Agency

DATE: September 13, 2022

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FROM: Amy Pechacek, Secretary-designee
Department of Workforce Development

SUBJECT: **Notice and Report for Final Draft Form of Proposed Rule
Clearinghouse Rule 22-056 – ch. DWD 801**

Pursuant to s. 227.19 (2), Stats., the Department of Workforce Development (Department) is submitting for legislative review the attached proposed rule in final draft form for Clearinghouse Rule 22-056, which revises ch. DWD 801. The governor approved this proposed rule on September 8, 2022. The analysis required under s. 227.14 (2), Stats., is included in the proposed rule. Also attached is the Fiscal Estimate & Economic Impact Analysis and the Rules Clearinghouse report and comments.

Basis and Purpose

The Department originally promulgated ch. DWD 801 to comply with rulemaking requirements for the Wisconsin Fast Forward grant program that was created by 2013 Wisconsin Act 9. The legislature subsequently enacted other acts authorizing the Department to make additional grants under a program known as the expanded Wisconsin Fast Forward grant program. Of those acts, 2017 Wisconsin Act 59 and 2019 Wisconsin Act 9 authorized the Department to make grants that are subject to the rulemaking requirements created by 2013 Wisconsin Act 9.

The Department is proposing to promulgate Clearinghouse Rule 22-056 in order to comply with the rulemaking requirements under 2013 Wisconsin Act 9 that apply to the grants authorized under 2017 Wisconsin Act 59 and 2019 Wisconsin Act 9.

Public Hearings

On August 29, 2022, the Department held a public hearing on the proposed rule and no comments were received.

Changes to the Analysis or Fiscal Estimate

The Department revised the analysis to indicate the deadline for comments and to reflect modifications the Department made to the rule in response to the Rules Clearinghouse. The Department made no other changes to the analysis or fiscal estimate.

Responses to Rules Clearinghouse

The Rules Clearinghouse made recommendations and comments related to the following:

Form, Style and Placement in the Administrative Code: The Department revised the proposed rule as recommended by the Rules Clearinghouse.

Clarity, Grammar, Punctuation and Use of Plain Language: The Department revised the proposed rule as recommended by the Rules Clearinghouse in comments 5.a. (1), (2), (4), (5), (6), (8) and (9), 5.b., 5.d., 5.e., 5.f., 5.g., 5.h., 5.i., 5.k., and 5.l. The Department's response to the remaining comments are as follows:

Comment 5.a (3): The last sentence of the first paragraph under “applications for grants” should clarify that one member of a consortium of placement partners needs to act as the applicant for the grant. As written, it suggests that the rule change is to allow a private for-profit or nonprofit business or service provider to serve as the applicant, when in fact the rule change is to allow for a consortium to apply, but only if one member serves as an applicant.

Department's response: The comment incorrectly reads the rule as requiring a member of a consortium of placement partners to apply for a grant for the consortium. Instead, the rule requires a public or private organization to serve as the applicant for the consortium. In addition, the rule defines a "placement partner" as an employer that is not an applicant. The Department revised the plain language analysis to clarify these requirements. The Department also notes that the comment's misreading of the rule may be related to the need for clarity that the Department has addressed in its response to comment 5.m. below.

Comment 5.a.(7): In the first item under “other revisions”, consider rewording to clarify the rule change and its effect: “Eliminates requirements regarding the Department’s ownership of instructional materials, software, and equipment developed under grants in order to allow grantees to make future use of those items”.

Department's response: The Department's purpose in eliminating the ownership requirements for instructional materials, software, and equipment is to allow the Department to determine the future use of those products as part of the terms of a grant agreement. The Department revised the plain language analysis to clarify this purpose.

Comment 5.c.: In s. DWD 801.04 (1), consider retaining the language that an organization is eligible to apply for grant funds rather than stating that it is eligible to receive funds, which could be read to imply that the applicant will receive the funds.

Department's response: The Department disagrees with the comment. An organization that satisfies s. DWD 801.04 (1) is eligible, but not entitled, to receive grant funds. Instead, the organization will receive a grant under s. DWD 801.06 (1) only if its application has a sufficiently high score when all applications are ranked under s. DWD 801.05 (6). Therefore, the Department made no revisions in response to the comment.

Comment 5.j.: In s. DWD 801.06 (4) on page 16, line 6, consider changing “notice of awards” to “notice of denial” unless applicants whose applications are denied receive a notice of awards.

Department's response: The comment alerted the Department that s. DWD 801.06 (4) should be revised to conform to the Department's practices. In response to the comment, the Department revised the rule to remove the reference to "notice of awards." Under the revision, a request for administrative review of an adverse decision regarding an application must be received by the Department within 10 working days of the date of the Department's notice to the applicant about the adverse decision.

Comment 5.m.: In s. DWD 801.13 generally, it is unclear whether the duties imposed on a grantee apply to every member of a consortium that receives grant funds or only to the member that acts as the lead applicant. In s. DWD 801.03 (9), a grantee is defined as a public or private organization receiving a grant from the department. However, s. DWD 801.10 (4) is amended to clarify that the grant amount cap does not apply to a grantee serving as an applicant for a consortium of placement partners. If only the lead applicant receives funds from DWD, are the consortium partners required to comply with the duties listed in s. DWD 801.13, or must the lead applicant comply on their behalf, or must only the lead applicant comply?

Department's response: The Department agrees on the need for clarity and revised the definition of "grantee" to specify that, when a lead public or private organization applies for a grant for a consortium of placement partners, the lead public or private organization is considered the grantee. As a result, the lead public or private organization, instead of the placement partners, must comply with the rule's requirements that apply to a grantee, including the requirements under s. DWD 801.13. The Department revised the plain language analysis accordingly.

Final Regulatory Flexibility Analysis and Response to SBRRB

The proposed rule does not have an effect on small businesses, as defined in s. 227.114 (1), Stats. Therefore, the Department did not submit the proposed rule to the Small Business Regulatory Review Board (SBRRB) and a final regulatory analysis is not required.