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Periodic Review Report of Findings

Agency name	Department for the Blind and Vision Impaired
Virginia Administrative Code (VAC) citation	22 VAC45-40
Regulation title	Rules and Regulations Governing Vending Stands in Public Buildings
Date this document prepared	February 27, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Acronyms and Definitions

Please define all acronyms used in this Report. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

DBVI, Agency, Department – Department for the Blind and Vision Impaired

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

Department for the Blind and Vision Impaired. Code of Virginia § 51.5-65 Functions, duties and powers of Commissioner. In addition to the functions, duties, and powers conferred and imposed upon the Commissioner by other provisions of law, he shall ensure that the provisions of this chapter are properly administered and adopt regulations to carry out the applicable provisions of this chapter.

Department for the Blind and Vision Impaired. Code of Virginia § 51.5-89 (Placement of blind persons in vacancies by Department; vending stands in Capitol; regulations.) When any vending stand or other business enterprise operated in a public building becomes vacant or a vacancy is created through the construction or acquisition of new public buildings or renovation or expansion of existing public buildings, the existence of such vacancies shall be made known to the Department. The Department acting on behalf of the blind shall have first priority in assuming the operation of such vending stand or business enterprise through placement of a properly trained blind person in such vacancy. This section shall not apply to vending stands or other business enterprises operated in (i) local government buildings, (ii) the State Capitol, or (iii) the legislative office buildings that shall be subject to the control of the Rules Committee of the House of Delegates and the Rules Committee of the Senate. Notwithstanding the provisions of this section, any locality may, by ordinance or resolution, provide for the Department to have first priority in assuming the operation of any vending stand or business enterprise located in a local government building.

The Randolph-Sheppard Act (P.L. 74-7320, as amended by P.L. 83-565 and P.L. 93-516, 20 USC 107 et. seq)

Code of Virginia §§ 2.2-4017 (Periodic review of regulations), 2.2-4007 (Notice of intended regulatory action; public hearing), and Executive Order 17 (2004) in combination require that every state regulation must be reviewed every four years to ensure the regulation is supported by statutory authority, determine that the regulation is necessary for the protection of public health, safety and welfare and are clearly written and easily understandable, and to make sure the regulations economic impact on small business is minimized as much as possible.

Alternatives

Please describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

There are no other viable options for achieving the purpose of the regulation because of the specificity and requirements of the Vending Facility program authorized by the Randolph-Sheppard Act. The Vending Stand Program provides persons who are blind with remunerative employment and self-support through the operation of vending facilities and other business enterprises and services on federal and other property.

Public Comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

No public comment received.

Effectiveness

Pursuant to § 2.2-4017, please indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

22 VAC 45-40 protects the public health, safety, and welfare of Virginia's residents who are blind, vision impaired, or deafblind by providing employment opportunities that have established priority in assuming the operations of vending facilities or other business enterprises or services in public buildings.

The regulation is clear and concise and explains that the chapter is promulgated by DBVI to clarify and establish the responsibilities of state and local agencies as they relate to persons who are blind and vision impaired having first priority in assuming operations of vending facilities or other business enterprises and service in public buildings. The chapter sets for the process by which the department shall be notified of vending facility sites in public buildings in the Commonwealth, that adequate space shall be made available for the facility or business enterprise as mutually determined by the department and the agency or department in which the enterprise or service is to be located. Further, it clearly addresses how complaints of non-compliance shall be handled.

Decision

Please explain the basis for the rulemaking entity's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

DBVI will amend this regulation to update the agency name from the Department for the Visually Handicapped to the Department for the Blind and Vision Impaired, to use person first language, to revise the Statutory Authority, and to include the phrase "other business enterprises and services" that may be operated by persons who are blind under this chapter. Amendments to this regulation are currently being reviewed by the counsel to the Department.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with the stated objectives of applicable law, will minimize the economic impact of regulations on small businesses.

22 VAC 45-40 is required for DBVI to comply with requirements set forth in Code of Virginia § 51.5-89 (Placement of blind persons in vacancies by Department; vending stands in Capitol; regulations.) The agency has not received any complaints or comments concerning the regulation.

The regulation is not complex; it is easy to read and understand. The agency is unable to determine when this regulation was last formally reviewed though it has confirmed that the regulation does not conflict with other state or federal regulation. There are no substantial changes in technology, economic conditions, or other factors that impact the importance of implementation of the regulation.

Economic impact on small business generally is negligible because the regulation pertains specifically to employment and self-support of persons who are blind and participating in Vending Facility Program authorized by the Randolph-Sheppard Act.