

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

FILED

JUL 15 8 48 AM '94

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

Committee for the Purchase of Commodities
and Services from the Handicapped
AGENCY: _____ TITLE NUMBER: 186

Legislative
RULE TYPE: _____; CITE AUTHORITY 5A-3-5

AMENDMENT TO AN EXISTING RULE: YES X NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 4

TITLE OF RULE BEING AMENDED: Qualifications for Participation

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH
ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS
COMMENT PERIOD WILL END ON August 12, 1994 AT 4:30 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING
ADDRESS.

John L. Parker, Chief Workshop Support

W. Va. Division of Rehabilitation Services

P. O. Box 50890, State Capitol Complex

Charleston, W. Va. 25305-0890

THE ISSUES TO BE HEARD SHALL BE
LIMITED TO THIS PROPOSED RULE.



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

4.40



STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
State Capitol
Charleston, WV 25305

Gaston Caperton
Governor

Chuck Polan
Cabinet Secretary

July 14, 1994

Honorable Ken Hechler
Secretary of State
Suite 157-K
Capitol Building
Charleston, West Virginia 25305

Re: Filing Legislative Rules

Dear Mr. Hechler:

Approval is hereby given for filing of the enclosed rules and regulations of the Committee for the Purchase of Commodities and Services from the Handicapped, entitled "Qualification for Participation" which are in accordance with the West Virginia Code.

Sincerely,

A handwritten signature in black ink, appearing to read "Chuck Polan".

Chuck Polan
Secretary

CP:tj

Attachment

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 186-4 Qualifications for Participation
Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural
Agency: Department of Administration
Address: Committee for the Purchase of Commodities and Services
 from the Handicapped
 Room E-102 State Capitol Building
 Charleston, West Virginia 25305-0139

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERNATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of above estimates:

3. Objectives of these rules:

To assure that all Approved Workshops of Rehabilitation Facilities meet certain qualifying rules and have the requisite number of persons with disabilities employed as workers on State Use Contract.

Rule Title: 186-4 Qualifications for Participation

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Assist in the development of employment opportunities for persons with disabilities.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

None

C. Economic Impact on Citizens/Public at Large.

None



Signature of Agency Head or Authorized Representative

Committee for the Purchase of Commodities and Services
from the Handicapped

Date: 7/14/94

TITLE 186
LEGISLATIVE RULES
COMMITTEE
FOR THE PURCHASE OF COMMODITIES
AND SERVICES FROM THE HANDICAPPED

SERIES 4
RULES AND REGULATIONS FOR
QUALIFICATIONS FOR PARTICIPATION

§186-4-1. General.

1.1. Scope.--The scope of this legislative rule is to set forth the qualifications for participation under the provisions of West Virginia Code, Section 5A-3-10.

1.2. Authority.--West Virginia Code, § 5A-3A-5.

1.3. Filing Date.--

1.4. Effective Date.--

1.5. Repeal of former rule.--This legislative rule repeals and replaces WV 186CSR4 "Rules and Regulations for the Qualifications for Participation" filed February 17, 1993 and effective July 1, 1993.

§186-4-2. Definitions.

The following words and terms, when used in this rule, shall have the following meaning, unless the context clearly indicates otherwise:

2.1. "Approved Workshops or Rehabilitation Facilities"--nonprofit organizations which are surveyed by the West Virginia Division of Rehabilitation Services using the "Standards for Community Workshops" established by the West Virginia State Board of Rehabilitation. These organizations are approved by the State Board of Rehabilitation for program participation as evidenced by a certificate of approval.

2.2 "CNA"--means the Central Nonprofit Agency.

2.3. "Certified Workshops or Rehabilitation Facilities"--means nonprofit organizations which apply to the West Virginia Division of Rehabilitation Services for participation in the program and whose documents have been reviewed by the staff of the West Virginia Division of Rehabilitation. These organizations are accepted by the West Virginia State Board of Rehabilitation as evidenced by a certificate of certification.

2.4. "Committee"--means the Committee for the Purchase of Commodities and Services from the Handicapped.

2.5. "Commodities"--means supplies, material, equipment, contractual services, and any other articles or things used by or furnished to a department, agency or institution of state government.

2.6. "DRS"--means the West Virginia Division of Rehabilitation Services.

2.7. "Qualified Workshops or Rehabilitation Facilities"--means organizations which must be either approved or certified by the West Virginia State Board of Rehabilitation and have been notified by the Committee that they meet all committee qualifications for program participation.

2.8. "Rehabilitation Facility"--means a facility that is operated for the primary purpose of providing vocational rehabilitation services to individuals with handicaps and that provides singly or in combination one or more of the following services:

2.8.1. Vocational rehabilitation services, including under one management, medical, psychiatric, psychological, social and vocational services.

2.8.2. Testing, fitting, or training in the use of prosthetic or orthotic devices.

2.8.3. Prevocational conditioning or recreational therapy;

2.8.4. Physical and occupational therapy;

2.8.5. Speech and hearing therapy;

2.8.6. Psychiatric, psychological and social services;

2.8.7. Evaluation of rehabilitation potential;

2.8.8. Personal and work adjustment;

2.8.9. Vocational training with a view toward career advancement -(in combination with other rehabilitation services);

2.8.10. Evaluation and control of specific disabilities;

2.8.11. Orientation and mobility services and other adjustment services to blind individuals;

2.8.12. Transitional or extended employment for those individuals with disabilities who cannot be readily absorbed in the competitive labor market;

2.8.13. Psychological rehabilitation services for individuals with chronic mental disabilities;

2.8.14. Rehabilitation engineering services.

2.9. "Services"--means a product by labor when that product is not considered a tangible commodity. Services include, but are not limited to, janitorial service, printing, food service, microfilming, temporary labor, and grounds maintenance.

2.10. "Workshop"--means a particular type of vocational rehabilitation facility where any manufacture or handiwork is carried on and which is operated by public agency or by a private corporation or association, no part of the net earning of which inures or may lawfully inure to the benefit of any private shareholder or individual, or by a cooperative, for the primary purpose of providing remunerative employment to disabled persons (a) as an interim step in the rehabilitation process for those who cannot be readily absorbed in the competitive labor market; (b) during such time as employment opportunities for them in the competitive labor market do not exist; or (c) for providing vocational evaluation and work adjustment services for disadvantaged persons.

§186-4-3. Qualification for Program Participation.

3.1. Requirements.--In order for a workshop or rehabilitation facility to qualify for participation in the program under the provisions of West Virginia Code, § 5A-3-10, it shall file the following documents with the Executive Secretary of the Committee for the Purchase of Commodities and Services from the Handicapped, "Committee," and the Central Nonprofit Agency, "CNA":

3.1.1. A letter of application by an officer of the workshop or rehabilitation facility attesting that the workshop or rehabilitation facility:

3.1.1.a. Operates as non-profit entity pursuant to 26 U.S.C. § 501 et seq. or as a State agency which operates in the interest of persons with disabilities, and that no part of its net income inures to the benefit of any shareholder or other individual...

3.1.1.b. Complies with applicable occupational health and safety standards required by the laws of the United States and of this State.

~~3.1.1.c. In the manufacturing of commodities and in the provision of services, whether or not procured under the state's program, is to employ persons with disabilities to perform at least 50% of its total production or service labor. If this condition is not met, the applicant must attach to the letter of application a satisfactory plan and timetable to achieve at least this level of labor using disabled individuals.~~

3.1.1.c. The approved workshop or rehabilitation facility will employ persons with disabilities to perform an average of at least 75 % of all direct labor associated with all manufacturing and service labor performed during the previous year. If this condition is not met, a satisfactory plan, including a timetable to achieve this level of utilization of persons with disabilities, must be included with the application.

3.1.1.d. Has an ongoing placement program which includes at least pre-admission evaluation and annual review to determine each worker's capability for normal competitive employment and maintenance of liaison with appropriate community services for the placement in such employment of any of its workers qualifying for such placement.

3.1.1.e. That the applicant agrees to abide by the following rules:

3.1.1.e.A. To furnish commodities or services in strict compliance with contract specifications.

3.1.1.e.B. To make appropriate records available for inspection by the Committee or CNA at any reasonable time.

3.1.1.e.C. To maintain records of direct labor hours performed in the facility by each worker and report monthly, on the approved form, hours worked by type of disability.

3.1.1.e.D. To comply with applicable occupational health and safety standards prescribed by the United States Department of Labor and the State of West Virginia Division of Labor.

3.1.1.e.E. To maintain a file on each person with a disability which includes reports of pre-admission evaluation, and annual re-evaluation of the individual's capacity for normal competitive employment, prepared by a person or persons qualified by training and experience to evaluate the work potential, interest, aptitudes and abilities of handicapped persons.

3.1.1.e.F. To make full disclosure to the CNA of all facts related to the costs, overhead, or profits in the production of commodity or provision of service.

3.1.1.e.G. To maintain an average utilization of persons with disabilities of at least 75% of all direct labor associated with all manufacturing and services performed by the approved workshop or rehabilitation facility. If this condition cannot be met, during a period of transition, the workshop must submit for Committee approval a plan including a transitional timetable to re-establish and maintain this 75% level of utilization.

3.1.2. A letter of approval from the DRS for participation in the program which attests DRS has audited, examined or has on file current documentation of the following items:

3.1.2.a. If workshop or rehabilitation facility is incorporated, a legible copy of the articles of incorporation showing the date of filing and signature of an appropriate State official and a copy of the bylaws certified by an officer of the corporation.

3.1.2.b. A copy of the Internal Revenue Service certificate indicating that the workshop or rehabilitation facility has been accepted as nonprofit for taxation purposes.

3.1.2.c. Evidence that the workshop or rehabilitation facility meets the criteria for determining nonprofit status pursuant to 26 U.S.C. § 501 et seq. and is registered and in good standing as a charitable organization with the Secretary of State pursuant to W. Va. Code, § 29-19-1 et seq.

3.1.2.d. If sub-minimum wages are to be paid, the current certificate(s) issued by the United States Department of Labor authorizing wage payments pursuant to 29 U.S.C. § 214(c).

3.1.2.e. A current listing of the names, addresses and phone numbers of officers of the workshop or rehabilitation facility.

3.2. Notification.--The Committee reviews the application letter and the DRS approval letter, and, if acceptable, notifies the workshop or rehabilitation facility through the CNA of its eligibility to participate in the program.

3.3. Revocation.--The Committee may revoke the rights of any workshop or rehabilitation facility to participate if, at any time, the Committee determines the workshop or rehabilitation facility is

not in compliance with all the requirements in Section 3.1 of this rule.

3.3.1. If the CNA recommends the denial of approved status to a workshop or rehabilitation facility, or the revocation or suspension of such status, for failure to comply with these regulations or for other good cause, the CNA is to refer the matter to the Committee for review.

3.4. Adverse Small Business Impact.--When the current vendor is a small business and the individual service or commodity contract in question comprises 33% or more of the total annual sales of that business, the current vendor will not be displaced without Committee approval unless the agency requests a change in vendor or the vendor leaves the contract voluntarily. This section does not prevent the approved workshop or rehabilitation facility from competing in the normal competitive bidding process and winning of a contract at the normal renewal time.

RATIONALE FOR CHANGES TO LEGISLATIVE RULE 186-4

QUALIFICATIONS FOR PARTICIPATION

This rule was originally formulated to ensure that qualified workshops or rehabilitation facilities were properly organized to carry out their mission of employing workers with disabilities in an appropriate work environment. The changes to this rule are to prevent negative impact by this program with small businesses in West Virginia by assuring that at least 75% of all direct labor in an approved workshop is performed by persons with disabilities. A section has been added addressing small businesses that are current vendors of contracts with the State of West Virginia.

SUMMARY OF CHANGES
LEGISLATIVE RULE 186-4
QUALIFICATIONS FOR PARTICIPATION

This rule change is proposed to ensure that persons with disabilities comprise 75 percent or more of an approved workshop or rehabilitation facility's workforce during the previous year. If this condition is not met, a satisfactory plan including a timetable for implementation to achieve this level of utilization of persons with disabilities must be included with the application. In addition, thereafter the approved workshop or rehabilitation facility agrees to maintain an average utilization of persons with disabilities of at least 75 percent of all direct labor associated with all manufacturing and services performed by the rehabilitation facility. If this condition cannot be met during a period of transition, the workshop must submit for Committee approval a plan including a transitional timetable to re-establish and maintain this level of utilization. A new section added would prevent adverse small business impact by an approved workshop or rehabilitation facility.