

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

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2009 MAY -8 AM 9: 00

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Division of Tourism TITLE NUMBER: 144

AMENDMENT TO AN EXISTING RULE: YES ☒ NO ☐

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 1

TITLE OF RULE BEING AMENDED: Direct Advertising Grants Program

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

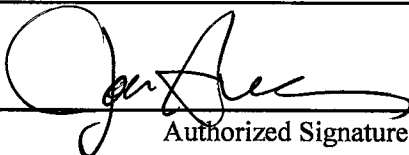
TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) HB 2170

SECTION §64-10-4, PASSED ON April 10, 2009

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: May 8, 2009


Authorized Signature

FILED

TITLE 144
LEGISLATIVE RULE
DIVISION OF TOURISM

2009 MAY -8 AM 9: 01

SERIES 1
DIRECT ADVERTISING GRANTS PROGRAM

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§144.1.1. General.

1.1. Scope. -- This legislative rule governs the application and award criteria for disbursement of direct advertising grants for regional advertising from the "tourism promotion fund."

1.2. Authority. -- W. Va. Code §§5B-2-9 and 5B-2-12.

1.3. Filing Date. -- May 8, 2009

1.4. Effective Date. -- May 8, 2009

§144-1-2. Definitions.

2.1. "Applicant" means a for profit or non-profit entity or organization located within the state that promotes tourism within the state and is also a destination. The term "applicant" may not include vendors that would be supplying services paid for out of grant funds, schools or camps.

2.2. "Application" means a written request for tourism promotion funds pursuant to this rule containing all forms, information and attachments executed by the applicant and all partners, if applicable.

2.3. "Amenity" includes spa services, golf courses, full- service restaurants, skiing or snow activities, tennis, horseback riding, hiking trails, boating or fishing.

2.4. "Attraction" means an entity which is at least one of the following:

2.4.1. A cultural or historic site or event which includes, but is not limited to, fairs or festivals, heritage and historic sites and museums;

2.4.2. Entertainment establishments which include, but are not limited to, pari-mutuel gaming establishments, live performing art centers, sporting organizations or arenas, vineyards or wineries;

2.4.3. Scenic or natural areas such as show caves or caverns;

2.4.4. Theme or Amusement Parks;

2.4.5. Zoos, Aquariums or Wild Animal Parks;

2.4.6. Recreational Activities, including but not limited to whitewater rafting, skiing and snow activities, mountain biking, hunting and fishing.

2.5. "Code" means the Code of West Virginia.

2.6. "Commission" means the Tourism Commission created pursuant to §5B-2-8 of the Code.

2.7. "Destination" means one of the following:

2.7.1. A region or area located within the state containing three or more attractions;

2.7.2. An independent activity located within the state;

2.7.3. A cultural or historic site or event which includes, but is not limited to, fairs or festivals, heritage and historic sites and museums;

2.7.4. Entertainment establishments which include, but are not limited to, pari-mutuel gaming establishments, live performing

art centers, sporting organizations or arenas, vineyards or wineries;

2.7.5. Scenic or natural sites such as show caves or caverns;

2.7.6. Theme or Amusement Parks; or

2.7.7. Zoos, Aquariums or Wild Animal Parks;

2.8. "Destination Inn or Bed and Breakfast" means a lodging facility located within the state whose recognized reputation for service and amenities are the primary motivating factor for visitors to travel to the area where it is located.

2.9. "Division" means the Division of Tourism created pursuant to §5B-2-8 of the code.

2.10. "Fulfillment" means printed materials used to respond to an inquiry requesting additional information generated by direct advertising or printed materials provided to the division, a state park, the national park service or other government agency for direct advertising.

2.11. "Grant Period" means the twelvemonth period running from the beginning project date through the ending project date and any extensions granted by the commission pursuant to subdivision 8.4.3. of this rule.

2.12. "Independent Activity" means an entity or organization which attracts a minimum of eighty-five percent (85%) of its visitors from outside the local market and is at least one of the following:

2.12.1. An entity or organization which provides recreational activities including, but not limited to, whitewater rafting, skiing and snow activities, mountain biking, hunting and fishing, bus tours, dinner cruises and sightseeing tours;

2.12.2. A Resort;

2.12.3. A Destination Inn or Bed and Breakfast;

2.12.4. An entity or organization offering vacation rentals; or

2.12.5. Destination shopping.

2.13. Internet Media means purchasing advertising on web sites other than that of the applicant organization. Internet media includes but is not limited to banner ads, leader boards, advertising in e-zines, e-newsletters and within internet broadcasting, where brand identification, as required by the Commission, is utilized. Internet Media does not include pay-per-click advertising or paid search advertising except as described in 6.9.21 of this rule.

2.14. "Local Market" means the geographic area within fifty (50) miles of a destination.

2.15. "Partner" means an entity or organization located within the state making a financial contribution toward the applicant's match requirement for an application for grant funds for a collaborative marketing program with a central advertising message directing tourists to a destination being represented by the applicant. The term "partner" may not include vendors that would be supplying services paid for out of grant funds.

2.16. "Resort" means a full-service lodging facility that is frequented for relaxation or recreational purposes and offers at least two amenities.

2.17. "Return on Investment" means the measure of a project's ability to use grant funds to generate additional value, including, but not limited to additional bookings and reservations.

2.18. "Total project cost" means the total of all proposed eligible expenditures contained within an application.

2.19. "Vacation Rental" means a lodging facility including chalets, cabins or condominiums. The term "vacation rental" may not include hotels or motels.

§144-1-3. Applications.

3.1. An applicant shall apply for tourism promotion funds on forms supplied by the Commission or on exact computer duplicates.

3.2. The applicant shall include a complete advertising or marketing plan, in sufficient detail to permit evaluation against the required criteria. The application shall include a complete media plan with advertising costs as well as a complete description of the project. The information shall be broken out by individual publications with ad size, specific broadcast stations, specific internet media providers, billboard locations, printing costs, production expenses, web site development, design, and upgrades as established in 6.7. of these rules and any other applicable charges. The application shall also include description as to how the partner(s) benefit from participation in the advertising plan and how said partner(s) complement the central advertising message directing tourists to a destination. The applicant must sign the application.

3.3. The Commission may request such additional information as it determines necessary to evaluate any application, including, but not limited to, financial and budgetary information related to the application or to the applicant or to any partners to the application.

3.4. Failure to provide the required application information, or failure to provide such additional information as the Commission reasonably requests by a specific date, in order to evaluate any application, may at the Commission's option, disqualify the entire application.

3.5. The Commission reserves the right to reject any application on the basis of the amount of funding sought; to request that the applicant revise an application to a lower or higher level of funding; or to award more or less than the full amount requested in the application. In addition, if more than eighty-five percent of an applicant's funding is provided by a single partner, the application must be approved by a two-thirds majority of the Commission. The Commission

also reserves the right to require brand identification on any advertising approved as part of the application and/or require that the applicant display appropriately the Division of Tourism's phone number and/or web address.

3.6. No application shall be considered by the Commission unless the total project cost is at least \$20,000.00 and the applicant's and partners' combined share of the project cost is at least \$10,000.00 as established in 7.1 of this rule, unless the application is filed under the small grants program established in §7.2 of this rule or under the fairs and festivals grants program established in §7.3 of this rule.

3.7. Projects that encompass an area in West Virginia and a contiguous area in another state may be considered by the Commission. The applicant must be a tourism destination in West Virginia, the total project cost must be at least \$20,000.00 and the applicant's and West Virginia partner's combined share of the project cost must be at least \$10,000 as established in 7.1 of this rule, unless the application is filed under the small grants program established in §7.2 of this rule or under the fairs and festivals grants program established in §7.3 of this rule, and the Commission may only match that portion of the project costs directly contributed by the West Virginia applicant and West Virginia partner(s), and only those costs that promote visitation to West Virginia. If a national company develops a campaign to promote West Virginia tourism, only the portion of the ads directly related to West Virginia tourism may be reimbursed from an approved grant.

3.8. The applicant and all partners shall disclose in the application the following. Failure to disclose this information shall result in the cancellation of any grant to the applicant organization previously approved by the Commission and the disqualification of the applicant and partner organizations and their representatives from future grant awards:

3.8.1. Any financial benefit that will be received, if the application is approved, by any entity in which the applicant or partner

organizations, its representatives or its employees have an ownership interest;

3.8.2. Any other employees or representatives of the applicant or partner organizations may have with a vested interest that is not otherwise described as part of the project;

3.8.3. If they are presently in compliance with all state, federal and local laws, including but not limited to, Hotel/Motel tax and payments to Workers' Compensation and Unemployment Compensation;

3.8.4. If they are presently involved in a bankruptcy proceeding, and who within their organization may be contacted for details of the bankruptcy proceeding. Involvement in bankruptcy proceedings is not automatic disqualification from the grants program, but the Commission reserves the right to request additional information regarding any bankruptcy proceedings to insure the state's money is being granted appropriately.

3.9. Activities that are a part of the grant project may not precede the grant's approval date by the Commission. The period of service for all submitted invoices shall fall within the grant period as approved by the Commission.

3.10. The Commission/Division reserves the right to determine the acceptability and value of all written, graphic and visual material as to its content and appropriateness for the general public and for the state's effort to promote tourism.

3.11. The Commission reserves the right to determine the acceptability of advertising to insure that it does not portray the State of West Virginia or foreseeably lead to the portrayal of the State of West Virginia in a derogatory or negative manner.

§144-1-4. Application Review and Evaluation.

4.1. The Division shall review all applications for completeness and conformance to this rule. If an application is deemed to be incomplete or not in conformance with this rule, the Division may return the application to the applicant for additional information or otherwise contact the applicant and request the information required. The Commission reserves the right to deny or to defer consideration of any incomplete application or of any application that fails to conform to the appropriate rules and guidelines.

4.2. The Commission shall establish a subcommittee to evaluate and prioritize all applications that are complete and conform to guidelines. The subcommittee may include non-commission members, but the majority shall be Commission members. The chair of the subcommittee shall be a Commission member and shall report to the Commission the subcommittee's recommendations for each application considered.

4.3. With the exception of applications received under the small grants program established in §7.2 of this rule, or under the fairs and festivals grants program established in §7.3 of this rule, final approval of applications must be upon a vote of the Commission. Eligible and complete applications shall be evaluated and given priority by the subcommittee, using the following criteria:

4.3.1. The project demonstrates potential for a strong positive return on investment and is well researched.

4.3.2. The project promotes a viable tourism destination, attraction or festival.

4.3.3. The project is a part of the applicant's overall marketing plan.

4.3.4. The project includes repeat marketing efforts and the results from those efforts justify repeat funding. Applications for projects that include repeat marketing efforts shall contain information demonstrating that such repeat marketing efforts are in addition to regular ongoing advertising activities.

4.3.5. The geographic advertising markets appear reasonable and based upon research.

4.3.6. The project demonstrates how it will increase visitation, length of stay and/or tourism expenditures from outside a 50-mile radius, or in a major out of state market.

4.3.7. The project includes tracking and evaluation measures.

4.3.8. The project will have a significant impact on the area's overall tourism efforts.

4.3.9. The project involves partnerships that leverage additional public/private investment.

4.3.10. The project supports advertising activities that are over and above regular ongoing advertising activities.

4.4. Grants will be awarded on a competitive basis, in accordance with program priorities established by section 4.3 above. The Commission anticipates that the demands on the tourism promotion fund will soon exceed the available monies in that fund. In the event that the fund does not have sufficient monies to fund the grants seeking funding, the Commission will award grants based on how successfully the grants meet the evaluation criteria. The Commission reserves the right to award some grants and deny others, as well as the right to fund grants at a level less than the 50% match.

4.5. Unsuccessful applicants will be notified in writing within fifteen (15) days of the Commission's/Division's decision on the application.

4.5.1. Grant applicants failing to receive an award due to funding limitations may revise their grant according to recommendations of the Commission/Division, and resubmit their grant application along with a letter of request for reconsideration in accordance with established deadlines.

§144-1-5. Match Requirement.

5.1. Applicant and partners must be able to provide the total project cost. Reimbursement from the grant is based on paid invoices submitted properly and in a timely manner to the Division. The match is up to 50% of qualified invoices reflecting approved advertising costs.

5.2. Cost overruns above the award amount shall be borne by the applicant unless the Commission grants prior approval in writing.

5.3. There shall be no changes in the project after the grant is awarded unless prior written approval of the Commission is obtained by the applicant. Changes to the project may not materially change the project's objective or goal. The request for changes must be in compliance with 8.4 of this rule.

5.4. The match shall be a cash match. No in-kind services may be utilized for the match.

5.5. State funds from any source may not be used for the match.

§144-1-6. Eligible and ineligible expenditures of grant funds.

6.1. Grant funds may only be used to pay for eligible expenditures for direct advertising. Eligible expenses for direct advertising include, but are not limited to the following:

6.1.1. The costs of advertising on television, radio, or other telecommunications media, in newspapers, magazines or other print media, direct mail advertising, internet media, and outdoor advertising or any combination thereof;

6.1.2. The costs of purchasing and using mailing lists for direct mail promotions;

6.1.3. The costs for United States postage used for direct mail and fulfillment for direct advertising: Provided, That if bulk mail is appropriate, the applicant must use bulk mail and reimbursement will be limited to the bulk

mail rate; and if bulk mail is not appropriate, reimbursement will be limited to the cost of United States mail first class postage;

6.1.4. The costs of printing travel related literature: Provided, That sixty percent (60%) of such literature is used as fulfillment for direct advertising within the approved application or approved request for modification of an approved application; or

6.1.5. Registration fees for consumer and trade shows: Provided, That the participation in such shows is for the purpose of attracting visitors to the state.

6.2. Eighty percent (80%) of a project's direct advertising must be directed toward areas outside of the local market or in major out-of-state markets, except for direct advertising for a fair or festival grant authorized by subsection 7.3 of this rule.

6.3. Notwithstanding the provisions of subsection 6.2 of this rule, all direct advertising in the form of billboards must be directed toward areas outside of the local market or in major out-of-state markets, except billboards for a fair or festival grant authorized by subsection 7.3 of this rule.

6.4. All direct advertising in the form of billboards must have a creative concept or layout approved by the Division in order for any of its cost to be considered an eligible expenditure.

6.5. Any direct advertising related to real estate must be for vacation rentals only. Any portion of direct advertising relating to the sale of real estate must be pro-rated. A creative concept must be submitted with any application or request for modification of an approved application for direct advertising relating to real estate. Advertisements for the sale of real estate in visitor guides and brochures must be grouped on a specific page or pages and those pages pro-rated from the grant at the time of the submission of the application. (Example: CVB X has a 32 page visitor guide and has determined that area realtors will take up 2 pages - CVB X must disclose this in its grant

application and media breakout and the totals must request funding for only 30 pages.) No direct advertising for real estate sales or realty agencies are permitted within cooperative advertising, unless such ads are specifically and clearly delineated as vacation rentals only.

6.6. Direct advertising may be in the form of cooperative advertising which is advertising that represents a community, region, county, multi-county or statewide organization and may include tourism businesses or organizations that enhance the destination for which the grant is to cover. Cooperative advertising must be entirely directed toward areas outside the local market or in major out-of-state markets. All cooperative advertising must have a creative concept approved by the Division in order for any of its cost to be considered an eligible expenditure.

6.7. Eligible expenses may include production expenses for direct advertising in the media categories provided in this subsection. The total cost of such production expenses may not exceed fifteen (15%) of the total cost of the direct advertising and in no event may the total cost of such production expenses exceed \$22,500, for any one of the following media categories:

6.7.1. Printed material, including the printing of direct mail and travel related literature;

6.7.2. Print media;

6.7.3. Television and radio;

6.7.4. Internet media; and

6.7.5. Billboards.

6.8. Eligible expenses may include web site development, design, and upgrades. The total cost of such production expenses may not exceed \$22,500. An itemized breakout of requested expenses must accompany the application or modification. Web site development, design and upgrades may not include any applicable ineligible expenditures as

listed under the provisions of sections 6.5 and 6.9 of this rule.

6.9. Grant funds may not be used to pay for ineligible expenditures. Ineligible expenditures include, but are not limited to the following:

6.9.1. Regular and ordinary business costs of the applicant including, but not limited to, supplies, personnel, phone, normal postage, distribution and shipping expenses or travel costs;

6.9.2. Any costs associated with preparation of the direct advertising grant application;

6.9.3. Costs for the rental or purchase of real estate;

6.9.4. Construction costs;

6.9.5. Costs of political or lobbying activities of any kind;

6.9.6. Membership fees or dues to any organization, or solicitation of membership to any organization through advertising within a grant program authorized by this rule;

6.9.7. Costs associated with the start up of any business or publication even if the business or publication may be totally or partially devoted to the promotion of tourism in the state;

6.9.8. The cost of purchase of audio/visual equipment;

6.9.9. Costs of alcoholic beverages;

6.9.10. Costs for any expenditure not identified in the application, unless the Commission grants prior approval in writing;

6.9.11. Costs of any public relations or research expense;

6.9.12. Costs for key rings, bumper stickers, mugs or any other similar promotional item;

6.9.13. Event production expenses, including costs for audio equipment, awards, entertainment, portable restrooms, labor or refreshments;

6.9.14. Costs relating to fundraising activities;

6.9.15. Costs associated with retail advertising, except for destination shopping which is able to produce verification that said destination attracts a minimum of eighty-five (85%) of its visitors from outside the local market: Provided, That no retail advertising may include price point advertising;

6.9.16. Costs of Tourist Oriented Directional Signs (TODS) and logo signs for gas, food, lodging and camping;

6.9.17. Costs of sponsorships;

6.9.18. Costs of items for resale;

6.9.19. Costs for monthly or annual server/web host fees, web maintenance fees, and training;

6.9.20. Costs for domain name registration, internal email addresses; or

6.9.21 Costs associated with pay-per-click or paid search advertising, except for statewide tourism associations which represent entire segments of the tourism industry of the state, including, but not limited to the WV Association of Convention and Visitors Bureaus, WV Ski Areas, WV Professional River Outfitters, Mountain State Association of B&B's, and only those associations as a whole.

§144-1-7. Grant Levels.

7.1. There is hereby established a large grants program to be administered by the Commission. Awards under this program shall be considered by the Commission and the total

project cost will be at least \$20,000.00 and the applicant's and partner's combined share of the project cost is at least \$10,000.00. The applicant and partner(s) must provide a minimum of 50 percent of the total project cost. Total grants awarded under this program shall be used by the applicant solely for advertising purposes. Large grant awards shall require the approval of the Commission. Grants must be received by established deadlines.

7.2. There is hereby established a small grants program to be administered by the Division. Awards under this program shall not exceed \$7,500 per applicant and no applicant shall receive more than two grants per fiscal year. The applicant and partner(s) must provide a minimum of 25 percent of the total project cost. Total grants awarded under this program shall not exceed \$2,000,000 in any fiscal year and shall be used by the applicant solely for advertising purposes. Small grant awards shall require the approval of the director of the Division. Grants must be received by the Division at least 45 days in advance of the beginning project date. No applicant who has received a grant larger than \$7,500 in any fiscal year may apply for a small grant under this section during the same fiscal year: *Provided*, That a non-profit entity may apply for and receive small grants even if it has received large grants in the same fiscal year.

7.3. There is hereby established a Fairs and Festivals grants program to be administered by the Division. Awards under this program shall be limited to Fairs and Festivals, and grants shall not exceed \$5,000.00 per applicant in any three-month period, as defined by the Division. The applicant must provide a minimum of 50 percent of the total project cost, but the requirements of § 5.5 of these rules shall not apply to the Fairs and Festivals grants program. Total grants awarded under this program shall not exceed \$1,000,000 in any fiscal year and shall be used by the applicant solely for advertising purposes. Fairs and Festivals grant awards shall require the approval of the Director of the Division. Grants must be received by the Division at least 45 days in advance of the beginning project date.

§144-1-8. Audit & Compliance.

8.1. The state reserves the right to review/audit an applicant's and/or partner's records, including financial statements and supporting records, relating to the project. Records, including financial statements and supporting records, must be retained by the applicant and all partners for a minimum of three years after the close of the project.

8.2. Upon discovery of any violation of the terms of the agreement, these rules, or state or federal law by the applicant or by any partner to the grant application, the state may terminate any project agreement and/or reject any future applications from such applicant or any partner to the grant application.

8.3. Approved grant recipients shall provide to the Division final written evaluations, as determined by the Commission at the time of grant approval, of the advertising program supported by the grant.

8.4. If the grantee determines that program changes are necessary to improve the overall effectiveness of the project, the grantee may submit a letter of request for program changes to the Division. The letter of request shall clearly be identified as a "Grant Modification Request" and shall contain a description of the proposed changes, i.e. a narrative describing why the changes would improve the overall effectiveness of the project; the original grant award number; and the date and amount of the original award. Modification requests shall be reviewed using, but not limited to the following criteria:

8.4.1. The Division shall consider no more than six letters of modification per grant.

8.4.2. Modification requests that involve the movement of media purchases may be granted at the discretion of the Division.

8.4.3. A modification request for an extension of the ending date of not greater than six months may be granted at the discretion of the Division, provided that said modification is

submitted no later than thirty days prior to the ending project date.

8.4.4. Other modifications must be reviewed and approved by the Commission, or a designee of the Commission, with the exception of modification requests for increases in funding, which must be reviewed and approved by the Commission.

8.4.5. Modifications may be approved without the submission of a new project application but those requiring Commission approval must be submitted at least 30 days prior to the Commission meeting.

8.4.6. Increases in funding may not exceed the minimum match requirement for large grants (\$10,000), or the maximum allowable match in the small grants (\$2,500) or Fair and Festival grants (\$5,000).

8.4.7. No modifications shall be granted after the end of the grant period.

8.4.8. Modifications for grants applied for under 7.2 and 7.3 of this rule shall be reviewed and approved by the Division.

8.5. Grant awards must be closed out within 90 days of the end of the grant period.

§144-1-9. Project Agreement.

9.1. Simultaneously with award, the Division shall enter into an agreement with the applicant, which includes, but is not limited to the following:

9.1.1. A statement that the information provided within the grant is true and correct, and that the applicant has read and understands this rule;

9.1.2. The grant amount;

9.1.3. A promise by the applicant and partners that no in-kind services have been used to match any portion of the grant;

9.1.4. An irrevocable promise of the applicant and partners to pay the approved expenses within the grant, and subsequently request up to 50% reimbursement those expenses;

9.1.5. A promise by the applicant not to assign or transfer any of the rights, duties or obligations of the applicant without the written consent of the Commission, or, in the case of grants awarded under 7.2 and 7.3 of this rule, the Division;

9.1.6. A promise by the applicant not to amend the grant without the written consent of the Commission/Division;

9.1.7. A statement that the project must be completed by the ending project date, unless a written request for an extension is submitted no later than 30 days prior to the ending project date;

9.1.8. A statement that the applicant and partners indemnify and hold harmless the State of West Virginia and the Tourism Commissioners for any liability arising from the agreement.

9.1.9. A sworn statement from an authorized representative that the applicant has filed all reports for state grants received as required under 12.4.14 of the West Virginia Code.

§144.1.10. Administration and Assistance by the Division of Tourism for the Tourism Promotion Fund.

10.1. The Division of Tourism shall utilize its staff to support the Cooperative Tourism Grant Program. The Division of Tourism shall report to the Commission regarding its staff, the advertising and promotion assistance rendered, and the management of the West Virginia welcome centers.