WEST VIRGINIA
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OFFICE WEST VIRGINIA SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Division of Tourism TITLE NUMBER: 144

CITE AUTHORITY: 5B-2-8 through 5B2-12

AMENDMENT TO AN EXISTING RULE: YES ___ NO x

IF YES, SERIES NUMBER OF RULE BEING AMENDED: ___

TITLE OF RULE BEING AMENDED: ___

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 144

TITLE OF RULE BEING PROPOSED: Direct Advertising Grants Program

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

Brian Helmick

Authorized Signature

TITLE 144
LEGISLATIVE RULE
DIVISION OF TOURISM

SERIES 1
DIRECT ADVERTISING GRANTS PROGRAM

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. – ____________

1.4. Effective Date. – ____________.

§144-1-2. Definitions.

2.1. "Applicant" means an entity or organization located in West Virginia who meets the definition of a "Destination" or "Attraction", whose purpose is to promote the tourism industry of West Virginia; which demonstrates the ability to pay all invoices for advertising approved in the grant application; which represents a city, county, region or regions, or tourism industry or activity; and which, in the judgment of the Commission, adequately represents the interests of the regional development district or districts which the applicant's application covers.

2.2. "Application" means a written request for tourism promotion funds containing the required forms, information and attachments, and that is fully and properly executed by the applicant and all partners.

2.3. "Attraction" means a subset within the larger "destination" recognized by visitors, that falls under one of the following categories:

2.3.1. Cultural or Historic Organizations: fairs and festivals, heritage and historic sites, historic estates, historic homes, and museums;

2.3.2. Entertainment: dinner theaters, gaming establishments, live performing art centers, sports organizations and/or arenas, vineyards/wineries;

2.3.3. Scenic/Natural Areas: show caves or caverns;

2.3.4. Sightseeing Companies: local or regional bus tours, dinner cruises, and sightseeing tours;

2.3.5. Theme/Amusement Parks;

2.3.6. Zoos, Aquariums or Wild Animal Parks.

2.4. "Commission" means the Tourism Commission created by West Virginia Code §5B-2-8.

2.5. "Destination" means a place, area, or region that contains several "attractions" or activities, or an independent activity that attracts a minimum of 85% of its visitors from outside the local market, that is promoted by one of the following marketing organizations:

2.5.1. Non-profit organizations, including: Convention and visitors bureaus, county, regional, multi-county, statewide organizations whose purpose is the promotion and facilitation of travel to a specific destination.

2.5.2. For-profit destination properties and marketing organizations, including: County, regional, multi-county, and statewide organizations whose purpose is the promotion and facilitation of travel to a specific destination.

2.6. "Division" means the Division of Tourism of the West Virginia Development Office.

2.7. "Fulfillment" means the printed materials used in response to an inquiry requesting additional information that was generated by direct advertising, or provided to the Division, State Parks or the National Park Service or other government agencies for the purposes of direct advertising.

2.8. "Grant Period" means the twelve month period running from the beginning project date through the ending project date, with the possibility of a single extension, if granted, of not greater than six months past the ending project date granted in accordance with 8.3 of this rule.

2.9. "Partner" means an entity or organization located in West Virginia with a financial contribution to a collaborative marketing program with a central advertising message directing tourists to a destination/attraction, being represented by the applicant. Partners must represent community, region, county, multi-county or statewide organizations, and must be local tourism businesses or organizations that enhance destination/attractions. Vendors within a grant cannot be applicants or partners within that same grant.

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

2.11. "Total project cost" means the total of all proposed project expenditures.

§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, billboard locations, printing costs, production expenses as established in 6.1.8. 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/attraction. 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 or attraction 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.

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

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.

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.

4.4. 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 Expenditures; Ineligible Expenditures.

6.1. Eligible expenditures are those directly related to direct advertising. Direct advertising includes, but is not limited to:

6.1.1. Advertising on television, radio, or other telecommunications medium, i.e. advertisements in newspaper, magazines or other print media; direct mail advertising; and outdoor advertising, i.e. billboards; or any combination thereof. The Commission reserves the right to deny or to suggest modifications to any direct advertising request.

6.1.2. Advertising of which 80% is directed toward areas outside of a 50-mile radius, or in major out of state markets, with the exception of Fairs and Festivals, established in 7.3 of this rule.

6.1.3. Billboards are for Destination/ Attraction Advertising only. Must be outside of 50-mile radius or in major out of state markets. All creative concept/layout for billboards must be approved in advance by the Division of Tourism. Fairs and festivals established in 7. 3 of this rule are exempt from 50-mile radius/major out of state markets, but must have creative concept/layout approval in advance.

6.1.4. Advertising expenses may include the purchase and use of mailing lists for direct mail promotions, and U.S. postage used for direct mail and fulfillment for direct advertising, including U.S. postage for such fulfillment provided that all such U.S. postage meets the following requirements: 1) Where bulk mail is appropriate the applicant must use bulk mail and will be reimbursed at that rate. 2) If bulk mail is not appropriate the applicant will be reimbursed up to the cost of U.S. mail first class postage.

6.1.5. Advertising related to real estate shall be for vacation rentals only. Any portion of advertising relating to the sale of real estate will be pro-rated. Creative concept must be submitted with the application or modification. Real estate ads 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 submission. (Example: CVB X has a 32-page visitor guide and has determined that area realtors will take up 2 pages – CVB X will disclose this in their grant and their media breakout and totals will request funding for 30 pages only). No real estate/realty ads are allowed within co-op advertising, unless such ads are specifically and clearly delineated as vacation rentals only.

6.1.6. Advertising may be cooperative advertising, representing a community, region, county, multi-county or statewide organization; and must be outside of 50-mile radius or in major out of state markets. Participants may include local tourism businesses or organizations that enhance destination/attractions. Creative concept must be approved in advance of publication.

6.1.7. Advertising expenses may include the printing of direct mail literature. Expenses may also include the printing of travel related literature of which 60% is used as fulfillment for direct advertising within the approved application or approved modification.

6.1.8. Advertising may include production expenses for direct advertising up to an amount not to exceed 15% of the cost of advertising within the following media categories. Production expenses must be approved and expended within the grant, and qualified for reimbursement with a total cap of $22,500 per media category:

6.1.8.1. Printed material (the printing of direct mail literature and travel related literature);

6.1.8.2. The cost of advertising in print;

6.1.8.3. The cost of advertising on television and radio;

6.1.8.4. The cost of advertising on billboards;

6.1.9. Advertising expenses may include the registration fees for consumer and trade shows, provided participation in such shows is for the purpose of attracting visitors to the State of West Virginia.

6.2. Ineligible expenditures include, but are not limited to:

6.2.1. Administrative costs of the applicant, including, supplies, personnel, phone, normal postage, distribution and shipping expenses, or travel costs.

6.2.2. Any cost associated with preparation of the direct advertising grant application.

6.2.3. The rental or purchase of real estate.

6.2.4. Construction costs.

6.2.5. Political or lobbying activities of any kind.

6.2.6. Membership fees or dues to any organization, or solicitation of membership to any organization through advertising within this program.

6.2.7. Costs associated with the start up of any business or publication although it may partially or totally be devoted to the promotion of tourism in the state.

6.2.8. The purchase of any audio/visual equipment.

6.2.9. The costs of alcoholic beverages.

6.2.10. Any expenditure not identified within the project application, unless the Commission grants prior approval in writing.

6.2.11. Any public relations or research expenses.

6.2.12. Key rings, bumper stickers, mugs, or any similar type of promotional items.

6.2.13. Event production expenses (e.g. audio equipment, awards, entertainment, portable restrooms, hired labor, refreshments, etc.).

6.2.14. Fundraising activities.

6.2.15. Retail advertising, with the exception of destination shopping, that is able to produce verification that said destination attracts a minimum of 85% of its visitors from outside the local market. No price point advertising is allowed.

6.2.16. Schools and camps are not eligible for grant funding.

6.2.17. TODS (Tourist Oriented Directional Signs) and Logo signs for gas, food, lodging and camping are not eligible.

6.2.18. Sponsorships.

6.2.19. Items for resale.

§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 $2,500 per applicant in any three-month period, as defined by the Division. The applicant and partner(s) must provide a minimum of 50 percent of the total project cost. Total grants awarded under this program shall not exceed $750,000 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.

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. The state may terminate any project agreement 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.

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.