WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION

Form #2

Do Not Mark In This Box

FILED

2004 OCT 18 P 4:04

OFFICE WEST VIRGINIA SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Division of Tourism TITLE NUMBER: 144

RULE TYPE: Procedural CITE AUTHORITY: 5B-2-8 through 5B-2-12

AMENDMENT TO AN EXISTING RULE: YES x NO ___

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 2

TITLE OF RULE BEING AMENDED: Direct Advertising Grants

IF NO, SERIES NUMBER OF 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 November 18, 2004 AT 5 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Division of Tourism
90 MacCorkle Avenue, SW
South Charleston, WV 25303
Attention: Anna Plantz, Cooperative
Tourism Director

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

Betty B Carver

Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

$3.80

Brief Summary of Proposed Revisions:

Revisions include:

- Revised deadlines for grant submissions for grants over $10,000 from monthly to quarterly.
- Inclusion of small grant and Fair and Festival grant deadlines.
- Revised eligible expenditures, including professional fees for direct mail only.
- Clarification of reimbursement procedures and partner responsibilities.
- Limitations on letters of modification.

TITLE 144
PROCEDURAL RULE
DIVISION OF TOURISM

SERIES 2
DIRECT ADVERTISING GRANTS

§144-2-1. General.

1.1. Scope. -- These procedural rules govern 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-2-12.

1.3. Filing Date. -- ~~December 30, 2002.~~

1.4. Effective Date. -- ~~February 1, 2003.~~

§144-2-2. Definitions.

2.1. "Qualified Applicant" means two or more entities or organizations whose purpose, in whole or in part, is to promote the tourism industry of West Virginia; which demonstrates the ability to provide the required match when invoiced; 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. The term "Qualified Applicant" or "Applicant" includes the entity signing the application as well as any partners to the grant application.

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

2.3. "Division" means the Division of Tourism of the West Virginia Development Office, or any successor agency or office.

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

§144-2-3. 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 ~~run dates and~~ advertising costs as well as a complete description of the project, event, fair or festival. The information shall be broken out by individual publications with ad size, specific broadcast stations, billboard locations, ~~advertising agency fees,~~ ~~professional fees,~~ printing costs, ~~production supplier/vendor costs~~ professional services as established in 7.2.12 of these rules and any other applicable charges.

3.3. Creative design and agency fees that are a part of the application shall be reasonable and customary and reimbursed as prescribed in the grant guidelines distributed by the Division of Tourism.

3.4. 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.

3.5. 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.

3.6. Applications must be received by the Division by 5 p.m. on the 1st of the following months for review on a quarterly basis at the Tourism Commission's regularly scheduled meetings:

Grant to be received at Division of Tourism	Review
January 1	March meeting
April 1	June meeting
July 1	September meeting
October 1	December meeting

~~no later than the 1st day of the month in the month immediately preceding the Commission's regularly scheduled meeting at which the application will be considered. (Ex. Applications to be considered at a June 17 Commission meeting must be submitted no later than May 1.)~~ Applications may be amended pursuant to requests made under §4.1 of these rules, but applications must be complete no later than ~~ten (10)~~ twenty (20) days preceding the Commission's meeting in order to be considered. Exceptions to these deadlines shall be only for good cause shown and shall require an affirmative vote of no less than seven members of the Commission prior to consideration.

3.7. The Commission may establish by majority vote alternative application deadlines and dates for grant award cycles. If the Commission does so, it shall disseminate notice of such dates to the West Virginia Hospitality and Travel Association and to any other person or organization requesting to be placed on the Commission's mailing list for such purpose.

3.8. In order to assure that funds received by an applicant under this program are not used to fund regular ongoing advertising activities but instead to support new advertising activities, the Commission may require that an applicant or any partner furnish financial information as described in §3.2 of these rules.

3.9. The Commission reserves the right to reject any application on the basis of the amount of funding sought, to request the applicant to 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 1-800-CALLWVA phone number.

3.10. No application shall be considered by the Commission unless the total project cost is at least $20,000.00 and the applicant's share of the project cost is at least $10,000.00, unless the application is filed under the small grants program established in §7.3 of these rules or under the fairs and festivals grants program established in §7.4 of these rules.

3.11. Regional projects that encompass an area in West Virginia and a contiguous area in another state may be considered by the Commission. The qualified applicant must be from West Virginia, the total project cost must be at least $20,000.00 and the qualified applicant's share of the project cost must be at least $10,000 and the Commission may only match that portion of the project costs directly contributed by the qualified West Virginia applicant.

3.12. The applicant shall disclose in the application any financial benefit that will be received, if the application is approved, by any entity in which the applicant organization, its representatives or its employees have an ownership interest. The applicant shall also disclose any other ~~vested interest~~ employees or representatives of the applicant organization may have with a vested interest that is not otherwise described as part of the project. 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 organization and its representatives from future grant awards.

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

§144-2-4. Review and Evaluations.

4.1. The Division shall review all applications for completeness and conformance to appropriate rules and guidelines. If an application is deemed to be incomplete or not in conformance with these rules, the Division may return the application to the applicant for additional information or otherwise contact the applicant and request the information required. <u>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.</u>

4.2. The Commission shall establish a subcommittee to evaluate and score 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 scoring and recommendations for each application considered.

4.3. Each application will be scored by the subcommittee on the basis of 100 points, as detailed in §144-2-5. Individual scores will be totaled and averaged for each application to produce the final score.

§144-2-5. Evaluation Criteria.

5.1. With the exception of applications received under the small grants program established in §7.3 of these rules, or under the fairs and festivals grants program established in §7.4 of these rules, final approval of applications must be upon a vote of the Commission. Eligible and complete applications shall be evaluated and scored by the subcommittee, up to a maximum of 100 points, using the following criteria:

5.2.1. The project demonstrates potential for a strong positive return on investment, is well researched and includes tracking and evaluation measures.

5.2.2. The project is appropriate to the market selected and complements or carries forward goals or objectives included in the Tourism Strategic Marketing Plan.

5.2.3. The project encompasses multiple attractions, municipalities, counties, or a regional development district or districts. <u>Explain how the project includes packaging.</u>

5.2.4. The project is creative, professional in quality and attainable with the funds requested or with additional identified and available funds.

5.2.5. The project is to a new market or media.

§144-2-6. Match Requirement.

6.1. Applicant must provide a minimum of 50% of the total project cost.

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

6.3. Any changes in the project after award requires prior written approval of the Commission and may not materially change the project's objective or goal.

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

6.5. State funds from any source may not be used for the match. Non-state funds from any source may be used for the match.

§144-2-7. Eligible Expenditures; Ineligible Expenditures.

7.1. Eligible expenditures are those directly related to direct advertising <u>that meets placement guidelines and any other guidelines approved by the Commission</u>. Direct advertising includes, but is not limited to, advertising on television, radio, or other telecommunications medium, i.e. advertisements in newspaper, magazines or other print media; direct mail advertising; ~~official highway signing~~; 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.

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

7.2.1. Administrative costs of the applicant, including travel costs.

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

7.2.3. The rental or purchase of real estate.

7.2.4. Construction costs.

7.2.5. Political or lobbying activities of any kind.

7.2.6. Membership fees or dues to any organization.

7.2.7. 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.

7.2.8. The purchase of any audio/visual equipment.

7.2.9. The costs of alcoholic beverages.

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

7.2.11. Any public relations or research expenses.

7.2.12. Any production fees except for professional services for creative development of direct mail only, not to exceed up to 12% of total printing costs, with a cap of $15,000. Fairs and festival grants are exempt from the production fees restriction for brochures and rack cards only.

7.3. 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 given quarter as defined from time to time by the Division. The applicant must provide a minimum of 50 percent of the total project cost. ~~Awards under the small grants program may be used to fund ongoing advertising programs.~~ 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.

7.4 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 given quarter, as defined from time to time by the Division. The applicant must provide a minimum of 50 percent of the total project cost, but the requirements of § 6.5 of these rules shall not apply to the Fairs and Festivals grants program. ~~Awards under the Fairs and Festivals grants program may be used to fund ongoing advertising programs.~~ 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.

§144-2-8. 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 quarterly and/or final written evaluations, as determined by the Commission at the time of grant approval, of the advertising program supported by the grant. 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; a narrative describing why the changes would improve the overall effectiveness of the project; the original grant award number, the date and amount of the original award. The Division shall consider no more than six letters of modification per grant. Modification requests that involve the movement of media purchases and/or a change in the ending project date for a period not to exceed a total of six months may be granted at the discretion of the Division. Other modifications must be reviewed and approved by the Commission. Modifications may be approved without the submission of a new project application but those requiring Commission approval must be submitted in accordance with the time frame established for applications in §3.6. No modifications shall be granted after the ending project date. A modification request for an extension of the grant period must be received prior to the end of the grant period.

8.4. Grant awards must be closed out within 90 days of the projects ending date unless an extension is approved in writing by the Commission. Final reimbursements shall not be made prior to the receipt of the final report required by §8.3 of these rules.

§144-2-9. Project Agreement.

9.1. Simultaneously with the award of a project, the Division shall enter into an agreement with the applicant detailing the responsibilities of both parties, the payment schedule, the project timetable, and any other necessary or appropriate conditions.

9.2. The project agreement shall require the applicant to hold harmless the State of West Virginia for any liability arising from the agreement.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Direct Advertising Grants, Title 144, Series 2

Type of Rule: ______ Legislative ______ Interpretive __x__ Procedural

Agency: Division of Tourism

Address: 90 MacCorkle Avenue, SW

South Charleston, WV 25303

1. Effect of Proposed rule:

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	-0-	-0-	-0-	-0-	-0-
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-
CURRENT EXPENSE	-0-	-0-	-0-	-0-	-0-
REPAIRS & ALTERATIONS	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-

2. Explanation of Above Estimates:
   Revisions to deadlines and eligible expenditures; clarifications on reimbursement procedures; and, limitations on modifications for the Tourism Promotion fund which is created by statute.

3. Objectives of These Rules:
   Revision and clarification of deadlines, eligible expenditures, reimbursement procedures, partner responsibility and limitation on modifications.

Rule Title: Direct Advertising Grants, Title 144, Series 2

4. Explanation of Overall Economic Impact of Proposed Rule:

   A. Economic Impact on State Government:
      N/A

   B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens: N/A

   C. Economic Impact on Citizens/Public at Large.
      N/A

Date: October 18, 2004

Signature of Agency Head or Authorized Representative:

Betty B Carver