

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #5

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF A AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: West Virginia Tourism Commission TITLE NUMBER: 144

CITE AUTHORITY 5B-2-12

RULE TYPE: PROCEDURAL X INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE _____
CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES X NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: II

TITLE OF RULE BEING AMENDED: Direct Advertising Grants

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

TITLE OF RULE BEING ADOPTED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE.

THE EFFECTIVE DATE OF THIS RULE IS January 1, 1998

Thomas E. Luva

TITLE 144
PROCEDURAL RULES
TOURISM COMMISSION
SERIES II
DIRECT ADVERTISING GRANTS

PROMULGATION HISTORY

These procedural rules, which govern the process for making available moneys deposited in the tourism promotion fund for direct advertising within the state's eight regional development districts, have the following promulgation history:

- **October 23, 1997** – Rules filed with the Secretary of State. Comment period begins.
- **November 25, 1997** – Comment period ends.
- **December 1, 1997** – Final rules filed with Secretary of State with Notice of Adoption.
- **January 1, 1998** – Effective date of rules.

Title 144
Procedural Rules
Division of Tourism & Parks
Series 2
Direct Advertising Grants

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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 -- West Virginia Code 5B-2-12
- 1.3 Filing Date --
- 1.4 Effective Date --

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.
- 2.2 "Commission" means the nine-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, printing costs, production supplier/vendor costs and any other applicable charges.
- 3.3 Creative design and agency fees that are a part of the application shall be reasonable and customary.
- 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.
- 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 application.
- 3.6 Applications must be received by the Division no later than the 15th day of the month 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 15.) Applications may be amended pursuant to requests made under §4.1 of these rules, but applications must be complete no later than ten (10) 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 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 applicant's share of the project cost is at least \$10,000.00, unless the application is filed under the small grant program established for fairs and festivals described in §7.3 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 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 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.
- 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, 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.

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. Direct advertising includes, but is not limited to, advertising on television, radio, or other telecommunications medium, i.e. Internet; advertisements in newspaper, magazines or other print media; direct mail advertising; official highway signing; and outdoor advertising, i.e. billboards; or any combination thereof.
- 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.

7.3 There is hereby established a small grants program to be administered by the Division. Awards under this program shall include, but not be limited to, events, fairs and festivals and individual grants shall not exceed \$500 per applicant. 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 small grants program. In addition, awards under the small grants program may be used to fund ongoing advertising programs. Total grants awarded under this program shall not exceed \$25,000 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.

144-2-8 Audit & Compliance

8.1 The state reserves the right to review/audit an applicant's records relating to the project. Records must be retained 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.

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 Commission for their review. 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 Commission may approve the changes requested without the submission of a new project application.

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

Cecil H. Underwood, Governor



WEST VIRGINIA DEVELOPMENT OFFICE

1900 KANAWHA BOULEVARD, EAST
CHARLESTON, WV 25305-0311

December 1, 1997

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

Dear Secretary Hechler:

Enclosed for filing are the final procedural rules of the West Virginia Tourism Commission related to direct advertising grants. Included in this package are the following:

- Notice of Agency Adoption of a Procedural Rule
- Promulgation History
- Final Procedural Rules

No comments were received during the comment period ending November 25, 1997.

Please feel free to contact me if you should have any questions or need additional information.

Sincerely,

Thomas C. Burns
Executive Director

TCB:jk

Enclosures

cc: Bill Bright
Bob Reintsema

KEN HECHLER
Secretary of State

MARY P. RATLIFF
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WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

(Plus all the volunteer
help we can get)

TO: THOMAS BURNS

AGENCY: WV TOURISM COMMISSION

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: December 4, 1997

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 2 TITLE: 144 WV TOURISM COMMISSION

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED

SIGNED: Jan L. Liu

TITLE OF PERSON SIGNING: Deputy Director

DATE: 12-10-97

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.

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