

Form #3

OFFICE WEST VIRGINIA
SECRETARY OF STATE


Authorized Signature

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 25, 2008

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV DIVISION OF REHABILITATION SERVICES
State Capitol PO Box 50890
Charleston, WV 25305
304-766-4997

LEGISLATIVE RULE TITLE: LOW VISION DRIVER TRAINING PROGRAM

1. Authorizing statute(s) citation W. Va. Code §17B-2B-10

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
July 16, 2008

b. What other notice, including advertising, did you give of the hearing?
None

c. Date of Public Hearing(s) *or* Public Comment Period ended:
August 18, 2008

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached X No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 28, 2008

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Tracy Carr, Senior Manager, Governmental and Public Relations

West Virginia Division of Rehabilitation Services

State Capitol PO Box 50890

Charleston, WV 25305

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- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached

**TITLE 130
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF REHABILITATION SERVICES**

**SERIES 3
LOW VISION DRIVER TRAINING PROGRAM**

Summary

In accordance with House Bill 4139 (RS 2008), the West Virginia Division Rehabilitation Services is responsible for developing and overseeing a Low Vision Driver Training Program that allows qualified individuals with low vision to utilize bioptic telescopic devices to drive in West Virginia. This rule establishes the criteria, including visual standards, required for acceptance into a Low Vision Driver Training Program. The rule also establishes curriculum requirements for the Low Vision Driver Training Program and sets standards for the successful completion of the Low Vision Driver Training Program provided by the Division of Rehabilitation Services.

**TITLE 130
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF REHABILITATION SERVICES**

**SERIES 3
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Statement of Need

To comply with House Bill 4139 (RS 2008), the West Virginia Division Rehabilitation Services, after consultation with the West Virginia Division of Motor Vehicles, must propose legislative rules for promulgation relating to bioptic driving provisions in West Virginia. The Division of Rehabilitation Services is responsible for developing and overseeing a Low Vision Driver Training Program that allows qualified individuals with low vision to utilize bioptic telescopic devices to drive in West Virginia. This rule establishes the criteria, including visual standards, required for acceptance into a Low Vision Driver Training Program. The rule also establishes curriculum requirements for the Low Vision Driver Training Program and sets standards for the successful completion of the Low Vision Driver Training Program provided by the Division of Rehabilitation Services.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: LOW VISION DRIVER TRAINING PROGRAM

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: WV DIVISION OF REHABILITATION SERVICES

Address: PO BOX 50890 STATE CAPITOL
CHARLESTON, WV 25305

Phone Number: 304-766-4997 Email: tracy.carr@wvdrs.org

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The Division of Rehabilitation Services will hire two full-time trainers, one rehabilitation driver educator and one orientation and mobility specialist, in order to fully and adequately implement this program. DRS will have to purchase a vehicle for training purposes. This program will be revenue neutral.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			155,000.00
Personal Services			130,000.00
Current Expenses			25,000.00
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues			

Rule Title: _____

Rule Title: LOW VISION DRIVER TRAINING PROGRAM

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

The Division of Rehabilitation Services will hire two full-time trainers, one rehabilitation driver educator and one orientation and mobility specialist, in order to fully and adequately implement this program. DRS will have to purchase a vehicle for training purposes. This program will be revenue neutral.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

Date: 8/22/08

Signature of Agency Head or Authorized Representative

Deborah Gately

FILED

**TITLE 130
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF REHABILITATION SERVICES**

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

**SERIES 3
LOW VISION DRIVER TRAINING PROGRAM**

§130-3-1. General.

3.1. Scope – In accordance with House Bill 4139 (RS 2008), the West Virginia Division Rehabilitation Services is responsible for developing and overseeing a Low Vision Driver Training Program that allows qualified individuals with low vision to utilize bioptic telescopic devices to drive in West Virginia. This rule establishes the criteria, including visual standards, required for acceptance into a Low Vision Driver Training Program. The rule also establishes curriculum requirements for the Low Vision Driver Training Program and sets standards for the successful completion of the Low Vision Driver Training Program provided by the Division of Rehabilitation Services.

3.2. Authority. – W. Va. Code §17B-2B-10.

3.3. Filing Date. –

3.4. Effective Date –

§130-3-2. Definitions.

2.1. Bioptic telescopic device – A two focus optical system used to magnify distant objects by including a small telescope that is mounted in a spectacle lens so as to allow an unobstructed view of the horizontal visual field through normal distance corrective lenses.

2.2. Commissioner – The Commissioner of the West Virginia Division of Motor Vehicles.

2.3. Division – This term refers to the West Virginia Division of Rehabilitation Services.

2.4. Experienced Driver – An experienced driver is someone who has been previously licensed through the Division of Motor Vehicles.

2.5. Novice Driver – A person with little or no driving experience.

2.6. Restricted out-of-state driver – A person who has been issued, by another state, a valid driver's license with a restriction requiring the driver to use a bioptic telescopic device.

2.7. Visual acuity – The measure of a person's clarity of vision based on the Snellen visual acuity scale.

2.8. Visual field – The area of physical space visible to the eye in a given fixed position.

§130-3-3. Low Vision Driver Training Program.

3.1. Criteria for Acceptance into Low Vision Driver Training Program. The criteria for acceptance into the Low Vision Driver Training Program provided by the Division are as follows:

3.1.a. General Eligibility Criteria.

1. An applicant must be eligible for services from the Division;
2. An applicant must agree to pay the Division for the cost of participating in the Low Vision Driver Training Program on a fee for service basis and agree to pay for the cost of the bioptic telescopic device or other equipment necessary to participate in this program; or
3. An applicant must secure other funding sources to pay the Division for the cost of participating in the Low Vision Driver Training Program on a fee for service basis and to pay for the cost of the bioptic telescopic device or other equipment necessary to participate in this program.

3.1.b. Visual and Physical Criteria.

1. An applicant must have a distance visual acuity between 20/70 and 20/200 inclusive with the best standard spectacle or contact lens correction in the better functioning eye;
2. An applicant must have a visual field of at least 120 degrees horizontally and 80 degrees vertically or better in the same eye used for visual acuity determination;
3. An applicant must have 20/40, or better, distance visual acuity in the better functioning eye using a bioptic telescopic device with no greater than a 4X powered telescope that has been prescribed by a licensed optometrist or ophthalmologist;
4. An applicant must have color vision sufficient to respond correctly to presence or changes in traffic light color, pavement markings, road signs, turn indicators, brake lights, emergency flashers or the presence of other road users including emergency vehicles;
5. An applicant must have normal head, neck and eye movement; and
6. An applicant cannot have an ocular diagnosis that is likely to result in significant deterioration of vision below the protocol levels of visual acuity and visual field.

3.1.c. Other Acceptance Criteria.

1. An applicant must have a licensed optometrist or ophthalmologist provide a complete eye examination and forward the results thereof on a specified form to appropriate Division and Division of Motor Vehicles staff within six months prior to the applicant starting the Division's Low Vision Driver Training Program;
2. The applicant must pass the Division of Motor Vehicles required examination for a Class G instructional permit within two weeks prior to enrollment in the Division's Low Vision Driver Training Program. The Division will provide the applicant with a certificate of acceptance to present to the Division of Motor Vehicles in order to take the written exam;

3. An applicant must submit to a comprehensive interview with the Division's Low Vision Driver Training Program coordinator;
4. An applicant must participate in and pass functional vision, clinical and behind-the-wheel driving evaluations, conducted by the Division's Low Vision Driver Training Program coordinator and/or a certified driver rehabilitation specialist or driver rehabilitation educator;
5. An applicant must sign the Division's release of information form; and
6. An applicant must understand that acceptance, admission, and completion of the Division's Low Vision Driver Training Program does not guarantee acquisition of driving privileges.

3.2. Curriculum for Low Vision Driver Training Program. The curriculum for the Low Vision Driver Training Program provided by the Division is as follows:

3.2.a. Novice Drivers. Applicants who are accepted for participation in the Division's Low Vision Driver Training Program who are novice drivers will be required to participate in a minimum of 30 hours of classroom instruction, a minimum of 30 hours of passenger-in-car instruction, and a minimum of 30 hours of behind-the-wheel instruction (daytime only) while accompanied by a certified driver rehabilitation specialist or driver rehabilitation educator. Instruction will expose the applicant to and will reinforce the following skills:

1. West Virginia road laws and road signs;
2. Defensive driving skills;
3. Use of bioptic lens systems;
4. Critical object and condition awareness skills;
5. Hazard perception and independent decision-making skills;
6. Dashboard controls;
7. Use of brake, accelerator, steering wheel, gearshift, mirrors (including blindspot checks);
8. Backing and parking skills;
9. Speed and directional control skills;
10. Yielding, merging and turning skills;
11. Changing lanes and passing skills;
12. Automotive maintenance and insurance; and
13. Changing a tire.

3.2.b. **Experienced Drivers.** Applicants who are accepted for participation in the Division's Low Vision Driver Training Program who are experienced drivers will be required to pass a written examination testing his/her current knowledge of road laws and road signs; must participate in and satisfactorily complete an approved, yet individualized, competency-based driver training program. The length of related classroom, passenger-in-car and behind-the-wheel instruction (in contrast to that required of novice driver applicants) will be dependent upon the:

1. Applicant passing a 150 question, multiple-choice, written and/or oral examination covering classroom competencies with a raw score of at least a 70% (105/150).
2. Applicant illustrating functional vision and narrative driving competencies (with bioptic lens system in place) indicating adequate carryover or transfer of classroom knowledge to that as an active passenger-in-car.
3. Applicant's current level of physical, mental and social driving skills under real world driving conditions within a variety of traffic, road and environmental settings.
4. Applicant's years of experience with an unrestricted driver's license. The portion of classroom instruction related to rules of the road and road signs may be waived if an applicant has three or more years of driving experience with an unrestricted driver's license and passes the required examination for a Class G instruction permit.

3.3. **Standards for Successful Completion of Low Vision Driver Training Program.** In order to show successful completion of the Division's Low Vision Driver Training Program, all applicants must:

3.3.a. Obtain a passing score of 75% (18/24) on a forty (40) mile in length standardized driver performance measurement (DPM) assessment (minimum of 4 trials) and

3.3.b. Obtain written confirmation and signature from the Division's Low Vision Driver Training Program coordinator that confirms that the applicant has completed the required number of hours of instruction and has fulfilled the competencies for satisfactory completion of the Division's Low Vision Driver Training Program.

3.4. **Criteria for Certifying Whether an Out-of-State Driver Training Program is Substantially Equivalent to the Division's Low Vision Driver Training Program.** Drivers who have a restricted driver's license from a state other than West Virginia and who want to establish residency and apply for Class G driving privileges in West Virginia must surrender his/her restricted out-of-state driver's license to the Commissioner.

3.4.a. The following criteria will be used by the Division's Low Vision Driver Training Program coordinator to determine if or to what extent the restricted out-of-state driver's former driver training program is equivalent to the Division's Low Vision Driver Training Program:

1. The applicant must provide a driver history and a crash history covering the last five years to the Division of Motor Vehicles;
2. The applicant must meet all criteria for acceptance into the Division's Low

Vision Driver Training Program; and

3. The applicant must provide written documentation from the director of the out-of-state bioptic driver training program that indicates: the dates and the total hours of training the driver received from the out-of-state program, the content and type(s) of training received, and verification of restricted out-of-state driver's satisfactory completion of an equivalent approved driver training program.

3.4.b. If the Division's Low Vision Driver Training Program coordinator determines that the out-of-state driver's former driver training program is not equivalent to the Division's Low Vision Driver Training Program, then the applicant must participate in an approved, yet individualized and competency-based driver training program through the Division. These applicants must meet the same competencies for satisfactory completion of the Division's Low Vision Driver Training Program and pass the same comprehensive road skills test prescribed by the Division of Motor Vehicles as all applicants for Class G driving privileges.

3.5. Minimum Requirements for Less Restrictive Driving Privileges. Class G drivers who wish to apply for non-restrictive driving privileges (i.e. day and night driving) or less restrictive driving privileges (i.e. removal of restrictions prohibiting interstate driving, driving within a certain mile radius from home, restricted hours of driving, etc.) shall be required to:

3.5.a. Be accepted into the Division's Low Vision Driver Training Program to participate in a minimum of one week of driver's training consisting of classroom, passenger-in-car and behind-the-wheel instruction (five hours in each category) covering the area(s) of restricted driving privileges.

3.5.b. Obtain written confirmation and signature from the Division's Low Vision Driver Training Program coordinator that he/she has completed the required number of hours of instruction and has fulfilled the needed competencies in the area(s) of restricted driving privileges from the Division's Low Vision Driver Training Program for consideration of removal of restriction(s) by the Commissioner.

3.6. Standards for the Comprehensive Road Skills Test. Upon satisfactory completion of the Division's Low Vision Driver Training Program, all applicants for a Class G driver's license will be required to participate in a comprehensive road skills test prescribed by the Division of Motor Vehicles, consisting of competencies in following areas:

3.6.a. Knowledge and correct use of dashboard controls;

3.6.b. Knowledge and use of brake, accelerator, steering wheel, gearshift and car mirrors;

3.6.c. Starting and stopping a vehicle;

3.6.d. Road laws and road signs;

3.6.e. Visual search patterns with bioptic lens system in place;

3.6.f. Turning a vehicle;

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3.6.g. Backing a vehicle;

3.6.h. Parking a vehicle;

3.6.i. Speed control; and

3.6.j. Directional control.

**TITLE 130
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF REHABILITATION SERVICES**

**SERIES 3
LOW VISION DRIVER TRAINING PROGRAM**

Summary of Comments and Responses

One comment received from Chuck Huss:

1) Page 2, after 3.1.A.1., should there be the word "or" after this statement. I am assuming that this is an oversight and that agency clients will not be expected to pay for this service or the prescribed bioptic lens system, correct?

Response: DRS declines this amendment because grammatically, the word "or" is not necessary or required after each item in a series when there are at least three items in a series in a sentence. Grammatically, the word "or" is implied after the first item in the series and is only required prior to the last item in the series, as is reflected in this rule.

2) Page 2, under 3.1.b.1. How will our agency address an applicant who illustrates 20/60 -1, -2, etc. distance visual acuity in the better functioning eye with best standard correction (versus using the 20/70 figure listed); assuming that applicants with 20/60 in the better functioning eye with best standard correction will be able to apply or reapply for driver licensure through standard application measures in WV?

Response: DRS will provide services for individuals with "20/60 -1, -2, etc." through the Low Vision Driver Training Program if necessary for the individual to obtain licensure and the individual is otherwise eligible for the Low Vision Driver Training Program.

3) Page 2, under 3.1.b.3. There are currently new prescription bioptic lens systems on the market that are greater than 4X and have fields of view greater than 6 degrees. (i. e. Designs for Vision, Inc has a 5.0 X and 6.0X Expanded Field Prism (EFP) bioptic lens system with fields of view of 8 and 6.5 degrees respectively. Ocutech, Inc. has a 6.0X Visual Enhancing System (VES) manual focus keplarian bioptic lens system with a field of view 9.60 degrees. One of the main reasons for restricting the power of the telescopic unit to 4X or less in years past was that a low vision patient could not achieve a magnified field of view of 6 degrees or more with any type of telescopic lens unit greater than 4X.

Telescopes mounted in a bioptic position and offering no less than 6 degrees field of view was what Dr. Randy Jose, O.D. (a highly recognized low vision specialist) indicated in years' past was needed to spot objects or forms effectively from their background. That is no longer the case as indicated above.

You may want to re-write 3.1.b.3 to read:

"3. An applicant must have 20/40, or better, distance visual acuity in the better functioning eye using a bioptic telescopic device, that presents no less than a 6.0 degree

telescopic field of view at optical infinity and is prescribed by a licensed optometrist or ophthalmologist;"

I know that the above statement sounds a bit more technical than the proposed "4X" telescope maximum, but sooner or later Dr. Griffith will be confronted by this scenario in his clinical low vision examination of applicants.

Response: DRS and DMV decline this amendment as it expands eligibility to the program beyond the initial proposed criteria. The rule can be amended in the future if further research and experience with the program indicates that candidates for the program who require higher power bioptic lenses can safely operate a motor vehicle.

4) Page 2, under 3.1.c.2, I would recommend that you change "within 2 weeks of enrollment" to "within 30 days of enrollment." Currently any applicant must wait a minimum of 7 days (if one fails the first time around) between attempts to re-take and pass the instructional permit test. The adult who transports the applicant to the testing site may need to wait to the following month for additional accrued annual leave from their job to take time off for such purposes.

Response: DRS declines to make this change. We believe that the two week standard is sufficient. The rule can be amended in the future if further research and experience with the program indicates that candidates for the program require more time.