

**PROPOSED REGULATION OF THE ADMINISTRATOR OF THE
REHABILITATION DIVISION OF THE DEPARTMENT OF
EMPLOYMENT, TRAINING AND REHABILITATION**

LCB File No. R227-05

February 14, 2006

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-10, NRS 232.945, 332.117, 333.375 and 334.025; §§11-13, NRS 232.945 and 233B.120; §14, NRS 232.945 and 233B.100.

A REGULATION relating to the Department of Employment, Training and Rehabilitation; establishing prerequisites and reporting requirements relating to certain contracts entered into by certain organizations whose primary purpose is the training and employment of persons with disabilities; providing a process for the disposition of declaratory orders, advisory opinions and regulations by the Administrator of the Rehabilitation Division of the Department; and providing other matters properly relating thereto.

Section 1. Chapter 232 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 14, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 14, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 8, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Administrator” means the Administrator of the Division.*

Sec. 4. *“Agency” has the meaning ascribed to it in NRS 334.025.*

Sec. 5. *“Division” means the Rehabilitation Division of the Department of Employment, Training and Rehabilitation.*

Sec. 6. *“Local government” has the meaning ascribed to it in NRS 332.015.*

Sec. 7. *“Organization” has the meaning ascribed to it in NRS 334.025.*

Sec. 8. *“Person with a disability” means a person:*

- 1. With a physical or mental impairment that substantially limits one or more of the major life activities of the person;*
- 2. With a record of such an impairment; or*
- 3. Who is regarded as having such an impairment.*

Sec. 9. *An organization must register with the Division, on a form prescribed by the Division, before contacting:*

- 1. Any agency concerning entering into a contract pursuant to the Program to Encourage and Facilitate Purchases by Agencies of Commodities and Services from Organizations established pursuant to NRS 334.025;*
- 2. The Nevada System of Higher Education concerning entering into a contract pursuant to the Program to Encourage and Facilitate Purchases by Agencies of Commodities and Services from Organizations established pursuant to NRS 334.025 if the Nevada System of Higher Education participates in the Program on a voluntary basis as described in NRS 333.470;*
- 3. Any governing body of a local government or its authorized representative concerning the award of a contract by the governing body of the local government or its authorized representative pursuant to NRS 332.117; or*
- 4. The Purchasing Division of the Department of Administration concerning the award of a contract by the Purchasing Division pursuant to NRS 333.375.*

Sec. 10. *1. Not later than 20 days after the end of each quarter of a fiscal year, an organization that has entered into a contract with an agency pursuant to the Program to*

Encourage and Facilitate Purchases by Agencies of Commodities and Services from Organizations established pursuant to NRS 334.025, with a governing body of a local government or its authorized representative pursuant to NRS 332.117 or with the Purchasing Division of the Department of Administration pursuant to NRS 333.375, shall provide a written report to the Administrator. Each quarterly report must include, without limitation:

(a) The number of contracts the organization has entered into during the preceding quarter pursuant to NRS 332.117, 333.375 or 334.025 which are in effect and a list of the agencies with which the organization has entered into those contracts; and

(b) The following information relating to each such contract:

(1) The type and scope of the services or commodities to be provided pursuant to the contract;

(2) The total number of persons with disabilities employed by the organization to provide services or commodities to an agency pursuant to the contract;

(3) The number of persons with disabilities, other than those persons who are described in subparagraph (4), who are employed by the organization to provide services or commodities to an agency pursuant to the contract who have at least 90 days of competitive employment without a break in service;

(4) The number of persons who are receiving vocational rehabilitation services who are employed by the organization to provide services or commodities to an agency pursuant to the contract who have at least 90 days of competitive employment without a break in service;

(5) The annual value of the contract;

(6) The ratio of the number of persons with disabilities who are employed by the organization to provide services or commodities to an agency pursuant to the contract to the

number of persons without disabilities who are employed by the organization to provide services or commodities to an agency pursuant to the contract;

(7) The hourly wage which is paid to each person with a disability who is employed by the organization to provide services or commodities pursuant to the contract; and

(8) The number of days each person with a disability was employed by the organization to provide services or commodities pursuant to the contract.

2. As used in this section:

(a) “Competitive employment” means work:

(1) In the competitive labor market that is performed by a person with a disability on a full-time or part-time basis in an integrated setting; and

(2) For which the person with a disability is compensated at or above the federal minimum wage or the state minimum wage, other than the special minimum wage as that term is defined in NAC 608.250, but not less than the customary wage and the level of benefits paid by the employer of the person with a disability for the same or similar work performed by persons without disabilities.

(b) “Fiscal year” means a period beginning on July 1 and ending on June 30 of the following year.

(c) “Integrated setting” has the meaning ascribed to it in 34 C.F.R. § 361.5(b)(33).

(d) “Vocational rehabilitation services” has the meaning ascribed to it in NRS 615.140.

Sec. 11. 1. *Except as otherwise provided in subsection 3, a person may request that the Administrator issue an advisory opinion concerning the applicability of a statute, regulation or decision of the Administrator.*

2. A request for an advisory opinion must be in writing and set forth:

- (a) The name and address of the person requesting the advisory opinion;*
 - (b) A clear and concise statement of the specific question for which the advisory opinion is being sought; and*
 - (c) A statement of the facts that support the advisory opinion being sought.*
- 3. A person may not request an advisory opinion concerning a question or matter that is an issue in a pending administrative, civil or criminal proceeding.*
- 4. The Administrator will review a request for an advisory opinion and issue a response within 30 days after receiving the request.*
- 5. An advisory opinion issued by the Administrator will be limited to the facts and circumstances set forth in the request.*

Sec. 12. *The Administrator will not render an oral advisory opinion to a request for an advisory opinion. An oral response, including, without limitation, a response given over the telephone, by a member of the staff of the Administrator is not a decision or an official advisory opinion of the Administrator.*

Sec. 13. 1. *Except as otherwise provided in subsection 4, a person may file a petition with the Administrator requesting that the Administrator issue a declaratory order concerning the applicability of a statute, regulation or decision of the Administrator.*

2. A person who files a petition for a declaratory order must file with the Administrator the original and two copies of the petition.

3. A petition for a declaratory order must include:

- (a) The name and address of the petitioner;*
- (b) The reason for requesting the declaratory order;*
- (c) A statement of the facts that support the petition for a declaratory order; and*

(d) A clear and concise statement of the question or matter to be decided by the Administrator.

4. A person may not file a petition for a declaratory order concerning a question or matter that is an issue in a pending administrative, civil or criminal proceeding.

5. The Administrator may refuse to review a petition that requests the issuance of a declaratory order if:

(a) The original petition is not accompanied by two copies of the petition; or

(b) The petition does not contain the information required by subsection 3.

6. The Administrator may:

(a) Conduct a hearing to determine issues of fact or to hear arguments relating to a petition for a declaratory order and may enter reasonable orders that govern the conduct of the hearing.

(b) Request that the petitioner provide additional information or arguments relating to the petition.

(c) Issue a declaratory order based on the contents of the petition and any material submitted with the petition.

(d) Consider relevant decisions that have been issued by the Administrator or any other entity which apply or interpret the statute, regulation or decision in question.

(e) Consider any other information the Administrator determines is relevant to the question or matter to be decided by the Administrator.

(f) Enter any reasonable order to assist his review of the petition.

7. The Administrator will maintain a record of the declaratory order that is indexed by subject matter and will mail a copy of the declaratory order to the petitioner within 60 days after:

(a) The petition is filed;

(b) A hearing is conducted concerning the petition; or

(c) Any additional information or written argument is received by the Administrator,

↪ whichever occurs later.

Sec. 14. *1. Any person who wishes to petition for the adoption, filing, amendment or repeal of a regulation of the Administrator must file with the Administrator the original and two copies of the petition.*

2. A petition for the adoption, filing, amendment or repeal of a regulation must include:

(a) The name and address of the petitioner;

(b) A clear and concise statement, including, if applicable, the proposed language, of the regulation to be adopted, filed, amended or repealed;

(c) The reason for petitioning for the adoption, filing, amendment or repeal of the regulation; and

(d) The statutory authority for the adoption, filing, amendment or repeal of the regulation.

3. The Administrator may refuse to act upon a petition for the adoption, filing, amendment or repeal of a regulation if:

(a) The original petition is not accompanied by two copies of the petition; or

(b) The petition does not contain the information required by subsection 2.

4. The Administrator will notify the petitioner in writing of his decision with regard to the petition within 30 days after the petition is filed.