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**Rules of**  
**Department of Elementary and**  
**Secondary Education**  
**Division 70—Special Education**  
**Chapter 770—Extended Employment**  
**Sheltered Workshops**

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**Title 5—DEPARTMENT OF  
ELEMENTARY AND  
SECONDARY EDUCATION  
Division 70—Special Education  
Chapter 770—Extended Employment  
Sheltered Workshops**

**5 CSR 70-770.010 Establishment of  
Sheltered Workshops**

*PURPOSE: The Department of Elementary and Secondary Education, Division of Special Education shall issue a certificate of authority to a not-for-profit corporation that meets the requirements listed in this regulation to operate a workshop which offers but does not entitle employment to persons with disabilities who have been approved by the department for such employment. Corporations seeking a certificate of authority shall file documents prescribed by statute and regulation.*

(1) For the purpose of this rule, the following terms shall mean:

(A) “Employee”—a person with a disability (“handicapped persons” as defined in section 178.900, RSMo) employed in a workshop. All persons employed by a sheltered workshop shall demonstrate productive capacity and their behavior shall contribute to the work environment of that shop. These regulations shall neither mandate nor prohibit employment of individuals who require personal supports which go beyond reasonable accommodations;

(B) “Staff”—persons employed by a workshop as defined in section 178.900, RSMo;

(C) “Workshop”—an extended employment sheltered workshop as defined in section 178.900, RSMo;

(D) “Department”—the Missouri Department of Elementary and Secondary Education;

(E) “Disability”—those conditions as defined in section 178.900, RSMo;

(F) “Gross revenue”—income from all sources;

(G) “Accrual accounting system”—a system of accounting based on recognition of income and expenses when incurred;

(H) “Productive capacity”—the amount of work accomplished by an employee with a disability, with reasonable accommodations, in proportion to that accomplished on the same or similar task by an experienced non-disabled employee. A minimum productive capacity level may be specified by the board of directors;

(I) “Full-time equivalent (FTE)”—equals six (6) person hours per day worked by an

approved employee or combination of employees; and

(J) “Reimbursable time”—time or activity that is related to production, training, and/or reasonable wait time that occurs normally as a part of the production process.

(2) A not-for-profit corporation, registered with the Missouri secretary of state, founded for the purpose of administering a workshop, and engaged in the employment and rehabilitation of people with disabilities, as defined in section 178.900, RSMo, shall be a separate corporation engaged only in the business of operating a workshop. However, the workshop may enter into a written agreement for the purposes of sharing the purchasing of materials or services, sharing personnel or sharing buildings and equipment. The agreement shall provide the responsibilities of each party. The agreement or any renewal or extension of the agreement shall be approved by the department. The corporation shall apply for and be granted a certificate of authority from the department in order to qualify for the receipt of state funds. To make application for a certificate of authority, a corporation shall file form FP-100-1 (Application for Extended Employment Sheltered Workshop Certificate), together with each of the following documents with the department for its review and approval:

(A) An authorization from the Wage and Hour Division of the United States Department of Labor to pay subminimum wages;

(B) Evidence of exempt status under section 501(c)(3) of the *United States Internal Revenue Tax Code*;

(C) A copy of the first year’s proposed budget which contains the following:

1. Budget message;
2. Estimated revenue;
3. Proposed expenditures;
4. Amount required for interest payments on debt;
5. Amount required for principal payments on debt; and
6. Budget summary.

In addition to the proposed budget, incorporation papers and bylaws for the workshop shall be provided to the department;

(D) Evidence of Workers’ Compensation insurance, as well as sufficient other insurance coverage to adequately protect its employees, the general public having access to workshop property, and all real and personal property for which the workshop is responsible from loss and liability. Workshops shall consider the recommendations of all local, state and federal monitoring agencies when designing insurance coverage and safety programs;

(E) A list of any approved grants, the funds from which would be used in the operation of the workshop;

(F) A copy of one (1) or more income-producing contract for the workshop, which is or together are sufficient, in the judgment of the department, to provide work for at least fifteen (15) full-time employees for at least a three (3)-month period;

(G) Organizations that have been in existence for more than one (1) year prior to application shall supply a certified audit of the previous fiscal year’s operation;

(H) Evidence of an active work force of not fewer than fifteen (15) eligible employees;

(I) Evidence of exemption from sales/use taxes from the Missouri Department of Revenue;

(J) Evidence the corporation has use of an appropriate facility or facilities in which to operate a workshop which substantially complies with all applicable federal, state, and local laws and regulations relating to safety, health, and accessibility; and

(K) A description of the proposed administrative and supervisory staffing to be employed to conduct daily operations of the workshop.

(3) Within fifteen (15) days of receipt of an application, the department shall notify the applicant whether the application is considered complete, and if not, what deficiencies exist. The omission of any of the documents specified in section (1) from the application or the failure of the applicant to complete the form FP-100-1 (Application for Extended Employment Sheltered Workshop Certificate) may result in the review and approval of the application being delayed or rejected. Applicants submitting incomplete materials shall have forty-five (45) days from the date of receipt of a notice from the department of the application being incomplete to complete all materials and to respond to any questions or file with the department additional documents which it may require. Applications which are not complete, as determined by the department, within sixty (60) days of their original receipt shall be rejected and notification of such rejection sent to the applicant. Any subsequent submittal by the same applicant shall be treated as a new application for the purpose of review and approval.

(4) Within thirty (30) days of the department’s notification of the applicant that its application is complete, the department shall schedule a public hearing in the local community in which the workshop is proposed to be located. The time and place of the public

hearing shall be determined by the department, in consultation with the applicant. The department shall file all notices required by law to conduct a public hearing.

(5) The department shall notify the applicant in writing within ten (10) days following the hearing of its decision whether or not to grant a certificate of authority. If the application is approved, the department shall issue a certificate of authority within thirty (30) days of the hearing. If the department decides not to grant a certificate of authority, it shall notify the applicant in writing stating the specific reasons for its decision to deny a request to grant a certificate of authority. Applicants for whom a certificate of authority is not granted may appeal the decision pursuant to Chapter 536, RSMo.

*AUTHORITY: section 178.920, RSMo 1994.\* Original rule filed Dec. 23, 1975, effective Jan. 2, 1976. Amended: Filed Nov. 23, 1998, effective July 30, 1999.*

*\*Original authority: 178.920, RSMo 1965.*

**5 CSR 70-770.020 Operation of Extended Employment Sheltered Workshops**

*PURPOSE: This rule specifies minimum operating standards for a workshop which has been granted a certificate of authority.*

(1) Continued operation of a workshop must be evidenced by the availability and eligibility of not fewer than fifteen (15) employees.

(2) The not-for-profit corporation which operates a workshop shall maintain substantial compliance with all federal or state statutes or regulations, or local ordinances at all times.

(3) A copy of any notification of noncompliance with federal or state laws or regulations shall be provided to the department by the workshop receiving such notice. This includes, but is not limited to, the United States Department of Labor, Wage and Hour Division; Occupational Safety and Health Administration; Department of the Treasury; Internal Revenue Service; and the Social Security Administration. Such notice shall be provided within ten (10) days of its initial receipt by the workshop. Failure to do so may result in the suspension of state aid payments.

(4) Gross revenues from the operations of a workshop shall be used first to support current operating expenses, including paying employees commensurate wages for comparable work in industry, in accordance with the

regulations of the Wage and Hour Division, United States Department of Labor. Remaining revenue may be used for capital expenditures for equipment, buildings, or expansion of activities as determined by the workshop board.

(5) A workshop shall maintain sufficient insurance coverage to adequately protect its employees, the general public having access to workshop property and all real and personal property for which the workshop is responsible from loss and liability. Workshops shall consider the recommendations of all local, state, and federal monitoring agencies when designing insurance coverage and safety programs.

(6) The corporate board of directors and workshop manager shall observe sound business and financial practice in all areas including but not limited to subcontracting, purchasing of materials, sale of products and services, budget and accounting control and safeguarding of property and material. The workshop shall maintain a comprehensive accrual or modified accrual accounting system which accurately represents the financial condition of the corporation. This requirement for an accrual accounting system shall be phased in by Fiscal Year 2000. Separate and accurate financial accounting shall be provided for each major program provided by the workshop.

(7) No fees shall be charged to employees approved by the department to work in a workshop.

(8) Hourly wages paid approved employees shall not be less than ten percent (10%) of the minimum wage standard as determined by the United States Department of Labor. The average income per hour for each employee working at piece rates shall be not less than ten percent (10%) of the minimum wage standard as determined by the United States Department of Labor during any work week.

(9) Approved employees of a workshop shall be engaged in production work, or vocational-related training at all times during which state aid is claimed. Vocational-related training shall be paid at ten percent (10%) of the current federal minimum wage. During any fiscal quarter, a workshop should have no less than seventy-five percent (75%) of its reimbursable time in income-producing work. State aid shall be paid for vocational-related training time up to a maximum of twenty-five percent (25%) of a workshop's monthly reimbursable time. Documentation of the time per employee and content of vocational-related training provided shall be maintained for inspection by department staff.

(10) The board of directors of workshop shall notify the department of any change in the employment status of the workshop manager, (e.g., hire, release, placed on leave, etc.); the notification shall be made in writing within five (5) days of the change.

(11) The maximum work day for state aid purposes shall be six (6) hours.

(12) Monitoring may be done periodically by the department to ensure compliance with these regulations. If the department determines there is evidence of a violation of regulation, the department shall notify the manager and board of the determination. The workshop shall prepare a corrective action plan to achieve compliance as required. The corrective action plan, with a time frame for completion, shall be submitted within ninety (90) days of receipt of the monitoring findings by the workshop. Failure to do so may result in the suspension of state aid payments.

(13) Every workshop shall have in effect written policies and procedures for investigating and resolving complaints of abuse and policies and procedures for employee grievance.

*AUTHORITY: sections 178.900, 178.910, 178.920, RSMo 1994 and 178.930, RSMo Supp. 1997.\* Original rule filed Dec. 23, 1975, effective Jan. 2, 1976. Amended: Filed Oct. 2, 1981, effective Jan. 18, 1982. Amended: Filed Nov. 23, 1998, effective July 30, 1999.*

*\*Original authority: 178.900, RSMo 1965; 178.910, RSMo 1965; 178.920, RSMo 1965; 178.930, RSMo 1965, amended 1972, 1973, 1975, 1979, 1987, 1993, 1994, 1997, 1998.*

*Op. Atty. Gen. No. 21, Millan, 11-22-71. Neither special funds from levies authorized by section 205.971, RSMo (1969) pertaining to county sheltered workshops nor funds from general revenue may be used by the directors of a county sheltered workshop or by a court to pay for the support, care or upkeep of county residents in a county sheltered workshop facility of another county. Persons living at a county residence workshop facility must come within the definition of "handicapped persons" in section 178.900, RSMo (1969) and be employed at the facility or in the community.*

**5 CSR 70-770.030 Renewal or Revocation of a Certificate of Authority**

*PURPOSE: Renewal of a certificate of authority is required annually and revocation may occur under certain conditions.*





(1) Workshops which are current grantees of a certificate of authority shall apply to the department each year to seek renewal of the certificate. Renewal of the certificate of authority is based on the submission of an annual report by the board of directors of the workshop corporation four (4) months after the end of the workshop's fiscal year. Failure to provide the necessary information by the due date may result in the suspension of state aid payments. The annual report should include, but not be limited to, the following items:

(A) The proposed budget for the current fiscal year;

(B) An audit prepared by an independent certified public accountant for the fiscal year just ended;

(C) A listing of the board's membership, including the name, address, office held and expiration date of each member's term;

(D) An original copy of a notarized signature sheet showing the official signatures of the officers of the corporation;

(E) A list of all management and supervisory staff, indicating the position, normal work location and length of service with the workshop corporation; and

(F) An original copy of the assurance of compliance form signed by the president and secretary of the workshop corporation board.

(2) If the department determines the workshop board of directors is not in substantial compliance with these regulations, and depending on the nature and severity of the situation, the department may—

(A) Notify the workshop board of directors and manager that the workshop is not in substantial compliance with these regulations; and

(B) Require a corrective action plan; or

(C) Suspend state aid payments until it is determined that the workshop is again in substantial compliance with these regulations; or

(D) If the workshop does not return to substantial compliance within ninety (90) days the state may proceed to revoke the workshop's certificate of authority pursuant to section 178.920(4), RSMo.

(3) Applicants which have been found by the department not to be in substantial compliance with federal or state laws or regulations may appeal the decision pursuant to Chapter 536, RSMo.

*AUTHORITY: section 178.920, RSMo 1996.\* Original rule filed Dec. 23, 1975, effective Jan. 2, 1976. Amended: Filed No. 23, 1998, effective July 30, 1999.*

*Original authority: 178.920, RSMo 1965.*

#### 5 CSR 70-770.040 Approval of Eligible Employees

*PURPOSE: The department shall determine the eligibility of applicants as persons with disabilities. This rule provides the process for determining eligibility of non-staff persons applying for employment in workshops. Workshops may receive state aid only on persons with disabilities who have been approved by the department. Department approval is not required for the employment of workshop staff.*

(1) A workshop provides employment for individuals with disabilities. If the workshop is certified by the United States Department of Labor, Wage and Hour Division, employees with disabilities working in the workshop may be paid subminimum wages. The application for certification of a person with a disability is initially submitted by the workshop manager to either the Missouri Division of Vocational Rehabilitation or Missouri Rehabilitation Services for the Blind. The agency to which an application is submitted shall conduct an evaluation. If the agency determines the existence of a disability, it shall certify such. The evaluating agency shall advise the workshop of this certification and the workshop may submit the certification to the department. The department may approve the applicant for workshop employment.

(2) A workshop shall notify the department prior to or concurrent with the employment of any disabled person previously approved by the department. The department shall not pay state aid for workers with disabilities who have not been approved by the department for employment. Department approval is not required for the employment of workshop staff.

*AUTHORITY: sections 178.900, RSMo 1994 and 178.930, RSMo Supp. 1997.\* Original rule filed Dec. 23, 1975, effective Jan. 2, 1976. Amended: Filed Nov. 23, 1998, effective July 30, 1999.*

*\*Original authority: 178.900, RSMo 1965 and 178.930, RSMo 1965, amended 1972, 1973, 1975, 1979, 1987, 1993, 1994, 1997, 1998.*

*Op. Atty. Gen. No. 21, Millan, 11-22-71. Neither special funds from levies authorized by section 205.971, RSMo (1969), pertaining to county sheltered workshops nor funds from general revenue may be used by the directors of a county sheltered workshop or by a county court to pay for the support, care or upkeep of county residents in a county sheltered workshop facility of another county.*

*Persons living at a county residence workshop facility must come within the definition of "handicapped persons" in section 178.900 RSMo (1969) and be employed at the facility or in the community.*

#### 5 CSR 70-770.050 Disbursement of Funds

*PURPOSE: The department shall disburse state aid to each certified workshop based on the full-time equivalents (FTE) of approved employees who worked during the month. This rule specifies the disbursement process.*

(1) After approval of a certificate of authority for a workshop, the department shall pay monthly, out of funds allotted to it for that purpose, to each workshop corporation a sum equal to the per diem specified by statute multiplied by the number of six (6)-hour or longer days worked by approved employees with disabilities with productive capacity during the preceding month. For each employee of a workshop who works less than six (6)-hour day, the workshop shall receive a pro rata share of the rate authorized by statute based on the percentage of six (6)-hour days worked. The department shall accept as proof of payment due a workshop, a statement signed by the president or vice president, acting in the absence of the president, and secretary, or treasurer acting in the absence of the secretary, of the workshop board and the workshop manager setting forth the dates worked and the number of hours worked each day for each approved employee with productive capacity employed by the workshop during the preceding month. These detailed records of work history by employee shall be maintained by the workshop for at least five (5) years following the year to which they apply and be made available for department inspection.

(2) Each workshop shall provide the department annually with a properly authenticated statement to permit the department to accept electronic submissions of invoices seeking the payment of state aid and electronically transfer state aid payments to workshop account(s).

(3) If it is determined by the department or by certified audit that a workshop has received state aid in excess of that which was permitted by statute and regulation, the workshop shall submit in writing to the department a repayment plan within thirty (30) days of determination of the overpayment. The department shall approve or deny the repayment plan and provide written notice of such to the workshop within thirty (30) days of its



submission of the repayment plan. Repayment plans shall propose the return of all excess state aid within twelve (12) months or less of their date of approval. The department may withhold state aid for the failure of a workshop to submit a repayment plan.

*AUTHORITY: section 178.930, RSMo Supp. 1997.\* Original rule filed Dec. 23, 1975, effective Jan. 2, 1976. Amended: Filed Oct. 2, 1981, effective Jan. 18, 1982. Amended: Filed Nov. 23, 1998, effective July 30, 1999.*

*\*Original authority: 178.930, RSMo 1965, amended 1972, 1973, 1975, 1979, 1987, 1993, 1994, 1997, 1998.*