

GOVERNMENT OF GUAM
OFFICE OF THE GOVERNOR
AGANA, GUAM

EXECUTIVE ORDER NO. 84-15

DEPARTMENT OF LABOR WAGE AND HOUR
COMMISSIONER'S RULES AND REGULATIONS
GOVERNING SUBMINIMUM WAGE FOR HANDICAPPED
WORKERS/CLIENTS/TRAINEES
(PL 5-143, Section 46011, Government Code
of Guam, as amended)

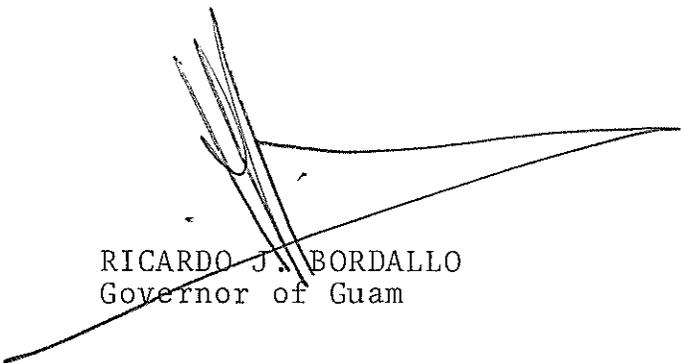
WHEREAS, Section 46011 of Title XLII, Chapter I, Minimum Wage and Hour Act, Government Code of Guam, authorizes the Wage and Hour Commissioner to provide by regulations for the employment in any occupation of individual whose earning capacity is impaired by age or physical or mental deficiency or injury at wages lower than the minimum wage rate provided in Section 46004 of the Act, as the Commissioner may find appropriate in order to prevent curtailment of opportunities for employment, to avoid undue hardship and to safeguard the minimum wage rate under the Act; and

WHEREAS, the Wage and Hour Commissioner, following public hearings held on July 14, 1982 and February 15, 1984, pursuant to Section 46011 of Title XLII and Chapter III, Title XXV (PL 13-40), of the Government Code of Guam, has prescribed the attached Rules I through XXIV providing for the administration and enforcement of Section 46011 of the Act,

NOW, THEREFORE, I, RICARDO J. BORDALLO, Governor of Guam,
hereby order the following:

1. The attached Subminimum Wage for Handicapped Workers/
Clients/Trainees Rules and Regulations, as prescribed by the
Wage and Hour Commissioner, are approved and promulgated, and
shall be effective upon filing with the Legislative Secretary.

Dated at Agana, Guam this 11th day of May,
1984.



RICARDO J. BORDALLO
Governor of Guam

COUNTERSIGNED:



EDWARD D. REYES
Lieutenant Governor of Guam

PART I

WAGE & HOUR DIVISION
DEPARTMENT OF LABOR
GOVERNMENT OF GUAM

RULES AND REGULATIONS

SUBMINIMUM WAGE FOR HANDICAPPED WORKERS/CLIENTS/TRAINEES

AUTHORITY: By virtue of the authority vested in him by Section 46011, Chapter I, Title XLII, Fair Labor Standard, Government Code of Guam, the Wage and Hour Commissioner hereby issues these rules and regulations, which he/she finds necessary in order to carry out his/her responsibilities in the administration and enforcement of the provisions of the law as related to the employment of Handicapped Workers at subminimum wage rate. These rules and regulations, subject to approval by the Governor and promulgation by Executive Order, shall be liberally construed to accomplish the purposes of the law and the policies of the Commissioner and shall be in force and effect until such time that it is amended by rules and regulations hereafter made and published by the Commissioner.

PURPOSE: The intended purpose and objectives of the law and these rules and regulations are to promote and encourage the employment in any occupation of individual whose earning capacity is impaired by age or physical or mental deficiency or injury at wages lower than the established minimum wage rate provided for in the Minimum Wage and Hour Act as the Commissioner may find appropriate to avoid undue hardship and to prevent curtailment of opportunities for employment of said individuals.

GENERAL: Licenses for the employment of handicapped workers in competitive employment are not issued for less than 75 per centum of the statutory minimum wage rate, unless a lower rate is clearly justified by DVR, in which case the lowest rate that may be authorized is 50 per centum of that minimum.

Employment of individuals whose work is incidental to DVR certified training or evaluation programs or whose productive capacity is inconsequential which may, when appropriate, be less than 50 per centum of the statutory minimum wage apply only when such individuals are employed in sheltered workshops authorized under Part III of these rules and regulations.

For the multihandicapped individuals whose earning capacity is severely impaired, a wage lower than 50 per centum of the statutory minimum wage rate, but not less than 25 per centum of that minimum may be authorized, under appropriate circumstances severely impaired earning capacity are employed in sheltered workshops.

RULE I

DEFINITIONS

1. "Commissioner," "Employ," "Employer," "Employee," "Wage," "Week," mean the same as the terms are defined in Section 46003, Chapter I, Title XLII, Fair Labor Standards, Government Code of Guam.

2. "Act" shall mean the Minimum Wage and Hour Act of the Fair Labor Standards, Government Code of Guam.

3. "Handicapped Worker" or "Worker" means an individual whose earning capacity is impaired by age or physical or mental deficiency or injury for the work he/she is to perform.

4. "Handicapped client" or "client" means an individual whose earning capacity is impaired by age or physical or mental deficiency or injury, and who is being served in accordance with the recognized rehabilitation program of a sheltered workshop within the facilities of such agency or in or about the home of a client.

5. "Sheltered Workshop" or "Workshop" means a charitable organization or institution conducted not for profit, but for the purpose of carrying out a recognized program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, and of providing such individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature.

6. "Handicapped trainee" or "trainee" means an individual whose earning capacity is impaired by age or physical or mental deficiency or injury, and who is receiving or is scheduled to receive on-the-job training in industry under any vocational rehabilitation program administered by an authorized vocational rehabilitation agency operating pursuant to the existing Federal and/or Territorial Vocational Rehabilitation laws, as amended.

7. "DVR" means the Department of Vocational Rehabilitation which administers and supervises the administration of vocational rehabilitation services.

8. "Department" means the Department of Labor.

9. "Director" means the Director of the Department of Labor.

10. "Board" means the Board of Control for Vocational Rehabilitation.

11. "Competitive employment" means employment of a handicapped worker whose earning or productive capacity would yield wages equal to at least 50 per centum of the minimum wage applicable under Section 46004 of the Act at wage rates which are commensurate with those for nonhandicapped workers in industry in the vicinity for essentially the same type, quality, and quantity of work.

12. "Training Program" means a program of not more than 12 months' duration, except that longer periods may be approved in unusual

circumstances, designed to (1) develop the patterns of behavior which will help a client adjust to a work environment, or (2) teach the skills and knowledge related to a specific occupational objective of a job family, and which meets DVR or equivalent standards.

13. "Evaluation program" means a program of not more than 6 months' duration, except that longer periods may be approved in unusual circumstances, using the medium of work to determine a client's potential, and which meets DVR or equivalent standards.

14. "Work activities center" shall mean a workshop, or a physically separated department of a workshop having an identifiable program, separate supervision and records, planned and designed exclusively to provide therapeutic activities for handicapped workers whose physical or mental impairment is so severe as to make their productive capacity inconsequential. (Therapeutic activities, as used herein, include custodial activities, such as, activities where the focus is on teaching the basic skills of living, and any purposeful activity so long as work or production is not the main purpose.)

15. "Vicinity" means the island or Territory of Guam.

PART II

SUBMINIMUM WAGES FOR HANDICAPPED WORKERS IN COMPETITIVE EMPLOYMENT

RULE II

APPLICATION FOR A LICENSE

1. Application for a license for the employment of handicapped workers at subminimum wage shall be made to the Commissioner.

2. The application shall set forth, among other things, the following:

a. The nature of the disability. Vague statements such as "nervous condition", "physically incapacitated", "slow worker", etc., are not sufficient.

b. A clear description of the occupation at which the worker is to be employed.

c. The wage the firm proposes to guarantee the worker per hour.

3. When a wage is requested which is less than 50 per centum of the statutory minimum wage rate, the application shall also contain:

a. Evidence that the individual is multihandicapped or so severely impaired that he/she is unable to engage in competitive employment. For such workers the rate shall be not less than 25 per centum of the statutory minimum.

b. Such application shall also be certified by DVR indicating that

the worker is a multihandicapped individual or other individual whose earning capacity is so severely impaired that he/she is unable to engage in competitive employment.

4. The application shall be signed jointly by the employer and worker and be submitted to the Commissioner by the employer.

RULE III

SPECIAL PROVISIONS APPLICABLE TO HANDICAPPED TRAINEES

1. Employment of trainees, pursuant to existing vocational rehabilitation laws, under a temporary license or a special license shall be governed by this part of this regulation.

2. Temporary license authorizing the employment of such trainees at wages lower than the statutory minimum wage but not less than 50 per centum of such wage and which are commensurate with those paid nonhandicapped workers in industry in the vicinity for essentially the same type, quality, and quantity of work may be issued when employment at such lower rate is necessary in order to prevent curtailment of opportunities for employment. Such temporary licenses are to be issued by duly designated representatives of DVR.

3. The temporary license issued will designate the employer, the trainee, and the special minimum wage rate. The temporary license will be valid for a period not to exceed 90 calendar days from the date of issuance and may not be issued retroactively.

4. Within 15 calendar days after issuance of a temporary license, DVR will forward a copy of the license together with a recommendation covering the special minimum rates for the balance of the training period to the Commissioner. Such recommendation shall not be for wage which is less than is authorized under this part of this regulation. The Commissioner, pursuant to this part of this regulation, may then issue a special license effective upon the expiration of the temporary license, or may terminate the temporary license prior to its expiration date, with or without issuing a superseding special license. If a temporary license is terminated prior to its expiration date without the issuance of a superseding special license, the Commissioner shall provide written notice of such termination to the employer, the trainee, and DVR.

5. When a special license authorizing a wage rate of less than 50 per centum of the statutory minimum wage is considered necessary, DVR may request that such license be issued by the Commissioner. Such a request shall be accompanied by supporting information, including DVR'S certification that the handicapped worker is a multihandicapped individual or other handicapped individual whose earning capacity is so severely impaired that he/she is unable to engage in competitive employment.

6. Maintenance cost for the purposes of training, evaluation and apprenticeship program under the sponsorship of DVR is authorized in lieu of wages for the trainee. As used herein, "maintenance" means payments, not exceeding the estimated cost of subsistence and provided at any time from the

date of initiation of vocational rehabilitation services through the provision of post-employment services, to cover a handicapped individual's basic living expenses, such as food, shelter, clothing, and other subsistence expenses necessary to derive the full benefit of other vocational rehabilitation services being provided in order to achieve such individual's vocational rehabilitation objective or to enable an extended evaluation of such individual's rehabilitation potential.

7. A temporary license shall not be issued for a trainee if a satisfactory training opportunity for the desired training is available in the community at the minimum wage applicable under the Act or above.

RULE IV

CONDITIONS FOR ISSUING SPECIAL LICENSE

1. A special license may be issued if the application is in proper form and sets forth facts showing:

a. A special minimum wage is necessary to prevent curtailment of the worker's or trainee's opportunities for employment.

b. The earning or productive capacity of the worker for the work he/she is to perform is impaired by age or physical or mental deficiency or injury.

c. Any other information the Commissioner or his/her authorized representative may require, including the requirement that the worker take a medical examination.

RULE V

ISSUANCE /DENIAL OF A LICENSE

1. If the application and other available information indicate that all established requirements have been met, the Commissioner shall issue a license. Otherwise, the Commissioner shall deny issuance of a license.

2. If issued, copies of the license shall be transmitted to the employer and the worker or trainee, and, in the case of a license for a trainee, to DVR. If license is denied, the same parties shall be given written notice of the denial.

3. A license may not be issued retroactively.

RULE VI

TERMS AND CONDITIONS OF A LICENSE

1. A license shall specify, among other things, the following:

a. The name of the worker or trainee.

- b. The occupation in which he/she is to be employed.
- c. The special minimum wage rate(s) to be paid.
- d. The period(s) of time during which such rate(s) may be paid.

2. A license shall be effective for a period to be established by the Commissioner or his authorized representative. Workers or trainees may be paid special minimum wages only during the effective period of the license.

3. The wage rate(s) established in the license shall be fixed at a figure designed to reflect adequately the individual worker's or trainee's earning or productive capacity. No wage rate shall be fixed at less than 75 per centum of the statutory minimum wage unless, after investigation a lower rate is clearly justified. Such lower rate shall not be less than 50 per centum of the statutory minimum wage, except for individuals certified by DVR as having earning capacity so impaired that they are unable to engage in competitive employment, but in no event shall such wage rate be less than 25 per centum of the statutory minimum wage nor less than is commensurate with wages paid nonhandicapped workers in industry in the vicinity for essentially the same type, quality, and quantity of work.

4. In an establishment or a vicinity where nonhandicapped employees are employed at piece rates in the same occupation, the handicapped worker or trainee shall be paid at least the same piece rates. The worker or trainee must be paid his/her full piece rate earnings or the earnings at the hourly rate specified in the license, whichever is greater.

5. The worker or trainee shall be paid not less than one and one-half times the regular rate at which he/she is employed for all hours worked in excess of the maximum workweek applicable to him/her under Section 46005 of the Act.

6. No provision of these rules and regulations, or of any license issued in accordance with these rules and regulations, shall excuse noncompliance with any Federal or Territorial law establishing higher standards.

7. The terms and conditions of any license may be amended by the Commissioner or his/her authorized representative upon written notice to the parties concerned, if the facts justify such amendment.

RULE VII

RENEWAL OF A LICENSE

1. Application for renewal of any license shall be filed in the same manner as an original application.

2. The application shall be submitted no later than 15 calender days and no earlier than 30 calender days prior to the expiration of the existing license.

3. If an application for renewal is properly and timely filed prior to

the expiration date of an existing license, the existing license shall remain in effect until the application for renewal has been granted or denied.

RULE VIII

RECORDS TO BE KEPT

Every employer who employs a handicapped worker or handicapped trainee pursuant to these rules and regulations shall keep, maintain, and have available for inspection by the Commissioner or his/her authorized representative a copy of the license and all other records, as applicable, required under the provisions of Rule XIX of these rules and regulations and Rule IV, of Wage and Hour Division Rules and Regulations, issued under the authority of Executive Order Number 61-14, dated May 17, 1961.

PART III

EMPLOYMENT OF HANDICAPPED WORKERS/CLIENTS IN SHELTERED WORKSHOPS

RULE IX

BOARD OF CONTROL FOR VOCATIONAL REHABILITATION OF SHELTERED WORKSHOPS

1. The Board of Control for Vocational Rehabilitation appointed periodically by the Governor shall advise and make recommendations to the Commissioner concerning the administration and enforcement of these rules and regulations and the need for amendments thereof from time to time and for such other purposes as may be desired by the Commissioner.

2. The Commissioner or his/her authorized representative may notify the Board prior to the denial or cancellation of any special license under Rule XIV, XVI, or XX and may afford the Board 15 calendar days or such additional time as he/she may allow, to present its views. The Commissioner or his/her authorized representative may also afford the Board an opportunity to present its views in connection with any petition for review filed under Rule XXI, any hearing held under Rule XXII or any petition for amendment of these rules and regulations.

RULE X

APPLICATION FOR A SPECIAL LICENSE FOR A WORKSHOP

1. Application for a special license for a workshop, including a work activities center, may be filed by any sheltered workshop with the Department. Application forms may be obtained from the Commissioner.

2. The application shall contain answers to all of the questions presented on the form, including, among other things, the following:

a. A description of the nature of the disabilities of the persons served by the workshop.

b. A description of the types of employment and the program provided by the workshop.

c. The earnings of each handicapped worker engaged in the work.

3. The application shall be signed by the president of the Board, or corresponding official, and a duly authorized officer of the workshop.

4. A workshop applying for a license, for the first time, which does not have individual earnings records on which to establish an appropriate license rate, may be issued a temporary license under the terms and conditions applicable to work activities centers, as it is defined under Rule I, and if it meets all of the requirements listed below, and presents satisfactory evidence that all of its clients will be compensated at wages which are equitable compensation for them.

a. No sheltered workshop or separate department thereof shall qualify as a work activities center if the average productivity per handicapped worker is \$1771.00 or more per year as measured by dividing the total annual earned income of the work program, less the cost of purchased materials used, by the average number of clients in the work program. The average number of clients shall be determined by taking the average of the total number of clients in the work program on the last day of each quarter in the previous fiscal year, provided such average is representative of the average number of clients employed during the entire year. No individual worker whose productivity substantially exceeds this average shall be employed at less than the statutory minimum wage under a work activities center license. A handicapped worker, whose productivity substantially exceeds the average, may be licensed under provisions of Rule II to VII of these rules and regulations, as applicable, in rare and unusual cases where necessary to avoid extreme hardship, if he/she is unable to earn the statutory minimum because of his/her handicap, and if his/her production and earnings are included in the averages provided in this paragraph. Where information is not available for a year, a temporary license for not more than six (6) months may be issued based on the limited information available, if it is represented that the center expects and has good reason to believe that the condition specified herein will be satisfied when one (1) year's data are available. Information to be considered will include the severity of disability of the handicapped workers employed, or other pertinent factors.

RULE XI

APPLICATION FOR A SPECIAL LICENSE FOR A TRAINING OR EVALUATION PROGRAM:

1. Application for a special license for training or evaluation programs may be filed by a sheltered workshop with the Commissioner. Application forms may be obtained from the Commissioner.

2. The application shall contain answers to all of the questions on the form, including, among other things, the following:

a. Evidence of DVR certification that the workshop operates a training or evaluation program as defined in Rule I, 12 and 13.

- b. A description of the services to be rendered.
 - c. The earning of the trainees and evaluatees engaged in work covered by existing Federal and/or Territorial Vocational Rehabilitation laws.
 - d. The results obtained with trainees and evaluatees who have participated in the programs during the previous year.
3. The application shall be signed by the president of the Board and a duly authorized officer of the workshop.

RULE XII

APPLICATION FOR A SPECIAL INDIVIDUAL RATE

1. A workshop may apply with the Commissioner at the time of applying for a license, or during the life of a license, for an individual rate for a handicapped worker who is unable to earn the applicable license rate. Application forms may be obtained from the Commissioner.
2. The application shall contain answers to all of the questions presented on the form, including, among other things, the following:
 - a. Information on the nature of the individual's disability.
 - b. The extent to which it impairs his/her earning capacity.
 - c. Justification for a lower individual rate based on productivity records maintained as required under Rule XIX, 1, b.
3. In the case of a request for an individual rate below 50 per centum of the statutory minimum wage rate, the application in addition shall contain evidence of DVR's certification that the individual's earning capacity is so severely impaired that he/she is unable to engage in competitive employment. Such certification shall be based on an evaluation report made upon recent completion or shortly before such completion of an evaluation or training program as defined in Rule I, 12 and 13. If an application for an individual rate below 50 per centum of the statutory minimum wage rate is filed prior to the expiration of the license authorizing the evaluation or training program, that license authority will be continued for the applicant until action is taken on the application. For clients entering a regular work program from a work activities center, a productivity report as required by Rule XIX, 1, b. covering the most recent 3-month employment period constitutes an acceptable evaluation report.

RULE XIII

CRITERIA FOR CONSIDERATION IN ISSUANCE OF A SPECIAL LICENSE

1. The following criteria may be considered by the Commissioner or his/her authorized representative in determining the necessity of issuing a special license and the conditions to be specified therein:

a. The present and previous earnings of handicapped workers of the workshop engaged in work covered by existing Federal and/or Territorial Vocational Rehabilitation laws.

b. Whether the individual handicapped workers are being paid wages commensurate with those paid non-handicapped workers in industry in the vicinity for essentially the same type, quality, and quantity of work.

c. The nature and extent of the disabilities of individuals served by the workshop.

d. The wages of nonhandicapped workers employed in private industry engaged in work comparable to that performed in the workshop.

e. The types and duration of medical, education, therapeutic, social work, and other rehabilitative services given to handicapped workers.

f. The extent to which the handicapped workers share, through wages, in the receipts for work done in the workshop.

g. the extent to which the handicapped workers may be learners or otherwise inexperienced.

h. The extent to which earned operating income, other than normal depreciation allowances, is used for capital expenditures for equipment, buildings, or expansion of activities in situations where the adequacy of the wage rates proposed by the workshop cannot clearly be established.

i. Whether there exists any workshopcustomer arrangement or subcontract agreement which constitutes an unfair method of competition in commerce and which tends to spread or perpetuate substandard wage levels.

j. Whether in the case of nongovernment operated workshops, the organization has obtained an exemption under Section 650.31, Title V Nonprofit Cooperative Associations, Civil Code of Guam and has registered as a nonprofit organization with the appropriate local governmental agency(ies) providing for such registration.

2. In addition, the following criteria will be considered in determining the advisability of issuing a special license for a training or evaluation program:

a. Whether there is competent instruction or supervision.

b. Whether there is a written curriculum and plan of procedures designed to obtain the objectives of the program.

c. Whether there are written records made at periodic intervals of not more than 3 months, showing progress of individual clients.

d. Whether in the case of a training program, there is a progression of rate increases as the trainee successfully advances through the steps of the program. The progression of rate indreases should be geared to at least the statutory minimum wage rate if the worker is being trained for competitive employment, or to at least the license rate if he/she is

being trained for workshop employment.

RULE XIV

ISSUANCE OF SPECIAL LICENSES

1. Upon consideration of the criteria specified in Rule XIII and if all applicable requirements of this rules and regulations are satisfied, the Commissioner or his/her authorized representative may issue a special license.

2. If a special license is issued, a copy shall be sent to the work shop. If denied, the workshop shall be notified in writing of the denial and the reasons therefor.

3. A special license may be issued for the entire workshop, a department of the workshop, a work activities center, a training or evaluation program, and individual handicapped worker or any combination thereof.

4. No special license will be issued when abnormal labor conditions, such as a strike, a lockout, or other similar condition, exists at the workshop for which such license is requested.

RULE XV

TERMS AND CONDITIONS OF SPECIAL LICENSES

1. A special license shall specify the terms and conditions under which it is granted.

2. A special license shall apply to every handicapped worker in the sheltered workshop or department thereof, for which the special license is granted.

3. A special license shall be effective for a period to be established by the Commissioner or his/her authorized representative. Handicapped workers may be paid wages lower than the statutory minimum wage rate only during the effective period of a special license.

4. Except for special licenses for work activities centers and for training or evaluation programs, and unless a lower special individual rate has been authorized on the basis of an application under Rule XII, 3, a special license shall provide a minimum wage, or different minimum wage for different departments, but none of them shall be less than 50 per centum of the statutory minimum wage rate. It may provide a minimum wage lower than the statutory minimum wage rate, for a specified period(s), designated as "learning period(s)." Such rate may apply during the specified learning period(s) to a handicapped worker who has never previously worked in the workshop, or who is transferred to a skill or semiskilled job in the workshop at which he/she has never previously worked, or who has returned to the workshop after such period of separation as would require relearning.

5. A special license issued to a work activities center or for a training or evaluation program need not set a minimum wage, other than required in 6 and 7 of this Rule.

6. The wage rates paid handicapped workers working at time rates shall be commensurate with those paid nonhandicapped workers in the vicinity in industry maintaining approved labor standards for essentially the same type, quality, and quantity of work.

7. The wage rates paid handicapped workers working at piece rates shall not be less than prevailing piece rates paid nonhandicapped employees in the same work in the vicinity in industry maintaining approved labor standards. In the absence of industry piece rates, time studies or other tests may be used by the workshop to establish piece rates. Such time studies should be made with nonhandicapped persons, although handicapped workers may be used in those situations where they are not handicapped for the type of work being tested and their production is comparable to that of nonhandicapped persons of average ability. The base hourly rate used in making time studies must be not less than the prevailing rate in industry for work requiring similar skill. Each handicapped worker working at piece rates must be paid his/her full piece-rate earnings. Pooling of earnings is not permitted except where piece rates cannot be established for each individual worker, e. g., in a team operation where each worker's individual contribution to the finished product cannot be separately tallied.

8. A special license may provide a lower individual minimum wage for a handicapped worker unable to earn the workshop or applicable department minimum wage. Such individual minimum wage may not be set at less than 50 per centum of the statutory minimum wage rate except for a handicapped worker whose earning capacity is so severely impaired that he/she is unable to engage in competitive employment as certified by DVR. The individual minimum wage for a handicapped worker so certified may not be less than 25 per centum of the statutory minimum wage rate.

9. Handicapped worker in the workshop shall be paid not less than one and one-half times the regular rate for all work in excess of the minimum workweek applicable under Section 46005 of the Act.

10. A special license shall provide that the workshop may not compete unfairly in obtaining subcontract work or in the sale of its products.

11. No worker or client shall be hired under a license issued under rules and regulations while abnormal labor conditions such as a strike, a lock-out, or other similar condition, exists in the workshop for which such license is issued.

12. Each handicapped worker in a workshop shall be informed promptly and in writing of the license rate applicable to him/her and of the terms of the license. Such information may be provided by a notice in the handicapped worker's pay envelope, or other suitable method.

13. The terms of any special license may be amended for cause, upon request of the sheltered workshop or handicapped worker, or upon the initiative of the Commissioner or his/her authorized representative.

RULE XVI

RENEWAL OF SPECIAL LICENSE

1. Application may be filed for renewal of any special license. The application for renewal shall be submitted not later than 15 calendar days and no earlier than 30 calendar days prior to the expiration of the existing license.

2. If an application for renewal has been properly and timely filed, the existing license shall remain in effect until the application for renewal has been granted or denied.

3. Handicapped workers may be paid wages less than the statutory minimum wage rate after notice that the application for renewal has been denied, if review of such denial is requested in accordance with Rule XXIII. Provided, however, that if the denial is affirmed on review, the sheltered workshop shall reimburse any person covered by the special license in an amount equal to the difference between the applicable minimum wage rate and any lower wage paid such person subsequent to the effective date of denial.

RULE XVII

STAFF WORKERS IN SHELTERED WORKSHOPS

No individual who is not a handicapped worker or client within the meaning of Rule I, 3 and 4 shall be employed under any special license issued pursuant to this rules and regulations at wages lower than the statutory minimum wage rate. Staff jobs are clearly identified as such where the duties include supervision of others or a high degree of responsibility such as office manager, bookkeeper or truck driver, except that truck drivers may be considered as clients in workshops serving alcoholics where it is the practice to select drivers (also called crew leaders) from among the handicapped workers. Some jobs, such as some office and telephone soliciting jobs, are not clearly either staff or client jobs and may be filed by either depending on the policy and practices of the workshop. Where handicapped worker status is indicated for such borderline workers on an application substantiating information may be requested, such as evidence of the use of screening procedures which are ordinarily required for handicapped workers, such as a medical examination, psychological and aptitude testing, etc., the use of rehabilitatin services offered by the workshop, and an attempt by the workshop in industry.

RULE XVIII

INDUSTRIAL HOMEWORK

A special license issued pursuant to this rules and regulations, authorizes a sheltered workshop to employ a handicapped worker in or about a home, apartment, tenement, or room in a residential establishment without the necessity of obtaining a special industrial homemaker's license for such persons under regulations of the Commissioner governing the employment of industrial homeworkers; nor shall it be necessary for a sheltered workshop to

obtain a special industrial homemaker's license for handicapped workers working in or about a home, apartment, tenement, or room in a residential establishment, who are earning the statutory minimum wage rate.

RULE XIX

RECORDS TO BE KEPT

1. Every sheltered workshop shall maintain and have available for inspection by the Commissioner or his/her authorized representative records of:

a. Disability, which show the nature of the handicapped worker's disability. Nonobvious disabilities must be substantiated by medical or psychiatric reports or results of psychological test, as appropriate.

b. Productivity, which show the productivity of each handicapped worker on a continuing basis or at periodic intervals not exceeding six (6) months. Piece rate or other records which show productivity on a continuing basis must also show the average expected production for a nonhandicapped person and either the piece rate paid in commercial industry or the average expected earnings of a nonhandicapped person for the production shown. Where productivity is measured by means of progress reports, records must relate the worker's performance to that of a nonhandicapped person receiving the prevailing wage in industry for similar work or work requiring similar skills. Records of time studies made to establish piece rate must be kept.

c. Learning periods, when such periods are authorized by the license which show the daily hours worked by each handicapped worker during the learning period(s), and the cumulative total of such hours.

d. When evaluation or training periods are authorized by the license records designating which workers are evaluatees and which are trainees, and the total period of time they have been in such a category.

e. When a sheltered workshop holds both a work activity center license and a regular program license, records showing which workers are under each license.

f. Records showing the handicapped workers for whom special individual rates have been authorized.

g. Pricing of work, which show that part of the unit prices which are allocated to direct labor (labor rate) and the average expected earnings of nonhandicapped workers at a normal expected production rate. Records of time studies made to establish prices must be kept.

h. Documents relating to DVR's certification including copies of training or evaluation agreements, authorizations for extensions of such periods, progress reports made during such periods, and evaluation or other reports on which a judgment relating to certification was made.

i. In addition, the records required under Rule VIII of these rules and regulations, except that any provision pertaining to homemaker's

handbooks shall not be applicable to handicapped workers of a sheltered workshop working in or about a home, apartment, tenement, or room in a residential establishment.

j. Every sheltered workshop having workers who are entitled to benefits under existing Federal and/or Territorial Vocational Rehabilitation laws shall at all times post a poster, as prescribed by the Commissioner, in a conspicuous place in the workshop where it may be observed readily by the handicapped workers and other workers in the workshop.

k. Records required under this Rule shall be preserved for a period of at least two (2) years.

RULE XX

CANCELLATION OF A SPECIAL LICENSE

1. The Commissioner or his/her authorized representative may cancel any special license for cause. A special license may be cancelled -

a. As of the date of issuance, if it is found that fraud has been exercised on obtaining the special license or in permitting a handicapped worker to work thereunder;

b. As of the date of violation, if it is found that any of the provisions existing Federal and/or Territorial Vocational Rehabilitation laws or of the terms of the special license have been violated; or

c. As of the date of notice of cancellation, if it is found that the special license is no longer necessary in order to prevent curtailment of opportunities for employment, or that the requirements of these rules and regulation have not been complied with.

2. If a petition for review is filed under Rule XXI, the effective date of the cancellation shall be postponed until action is taken thereon. Provided, however, that if the cancellation order is affirmed on review, the workshop shall reimburse any person covered by the special license in an amount equal to the difference between the applicable minimum wage and any lower wage paid such person subsequent to the effective date of cancellation.

3. Except in cases of wilfulness or those in which the public interest requires otherwise, before any special license shall be canceled, facts or conduct which may warrant such action shall be called to the attention of the sheltered workshop in writing and it shall be afforded an opportunity to demonstrate or achieve compliance with all lawful requirements.

RULE XXI

REVIEW OF ACTION

1. Any person aggrieved by an action of an authorized representative of the Commissioner taken pursuant to these rules and regulations may, within 45 calendar days after such action, file with the Commissioner a request for

review of the action in question.

2. The request shall be in written form setting forth grounds for seeking the review.

3. If the request is granted by the Commissioner, the Commissioner or an authorized representative who took no part in the action under review may, to the extent he/she deems it appropriate, afford other interested persons an opportunity to present data and views.

4. Based on the results of the review, the Commissioner shall render a decision on the matter.

RULE XXII

SUBMISSION OF INFORMATION, INVESTIGATIONS, AND HEARINGS

The Commissioner or his/her authorized representative may require at any time the submission of such information, other than that specified elsewhere in these rules and regulation, as is deemed appropriate or may conduct an investigation, which may include a hearing prior to taking any action pursuant to these rules and regulations. To the extent he/she deems appropriate, the Commissioner or his/her authorized representative may provide an opportunity to other interested persons to present data and views.

RULE XXIII

ISSUANCE OF LICENSE FOR EXPERIMENTAL PURPOSES

In addition to the issuance of license as provided in these rules and regulations, the Commissioner may authorize the issuance of licenses to permit employment of handicapped workers in competitive employment or handicapped workers or clients of a sheltered workshop at less than the statutory minimum wage rate as part of experimental programs to increase employment opportunities for such persons. Such licenses shall be issued in such types of cases and on such terms and conditions within the scope of Section 46011 of the Act as the Commissioner shall determine will best further any such experimental program.

RULE XXIV

RELATION TO OTHER LAWS

Nothing contained in these rules and regulations shall be construed as authorizing any act that is contrary to any Federal or Territorial law.

TERRITORY OF GUAM
DEPARTMENT OF LABOR, WAGE AND HOUR DIVISION
399 DUENAS BUILDING 2nd FLOOR
ROUTE 8, MAITE

APPLICATION FOR HANDICAPPED WORKER/ TRAINEE LICENSE

Handicapped Worker

Handicapped Trainee

The undersigned hereby makes application for a special license to employ the herein named at wages lower than the minimum wage under Section 46004 of Fair Labor Standards, Title XLII Government Code of Guam.

Name of Firm: _____

Address: _____

Nature of Business: _____

Is your business subject to the Federal Fair Labor Standard Act?

Yes

No

Name of handicapped: _____

Address: _____ Birth if under 18 _____

Proposed Occupation: _____ Proposed Hourly Rate _____

Estimated Duration for Exception: _____

Nature of Disability: _____

Date _____

By: _____
(Owner, Partner or Officer)

By:

TERRITORY OF GUAM
DEPARTMENT OF LABOR, WAGE AND HOUR DIVISION
399 DUENAS BUILDING 2nd FLOOR
ROUTE 8, MAITE

APPLICATION FOR HANDICAPPED WORKSHOP LICENSE

The undersigned hereby makes application for a special license to employ the herein named at wages lower than the minimum wage under Section 46011 of Fair Labor Standards, Title XLII Government Code of Guam.

1. Name of Agency _____

2. Address _____
(Number and Street) (City) (Zip Code)

3. How many clients are currently served by the workshop? _____

4. Describe briefly the services, program, and types of employment provided clients: _____

5. Nature of handicap(s) of clients served: _____

6. I HEREBY CERTIFY that, to the best of my knowledge and belief, all statements are true, and that the agency is a sheltered workshop conducted not for profit, but to carry out a recognized program of rehabilitation and remunerative employment.

Date

Signature of Agency Executive

Title

TERRITORY OF GUAM
DEPARTMENT OF LABOR, WAGE AND HOUR DIVISION
399 DUENAS BUILDING 2nd FLOOR
ROUTE 8, MAITE

SHELTERED WORKSHOP LICENSE

Pursuant to Section 46011 of Fair Labor Standards, Title XLII Government Code of Guam, authorization is granted to employ handicapped clients at hourly rates not less than those provided below.

_____	_____	_____
		License No. _____
		Effective: _____
		Expires: _____
_____	_____	_____

A. Learning, Evaluation or Training period: _____
(Rate per hour)

B. Special workshop rate: _____
(Rate per hour)

C. Individuals with hourly rates below the approved special workshop rate shown in "B" (excluding clients undergoing learning, evaluation or training):

Name of Client	Rate Per Hour	Name of Client	Rate Per Hour

_____	_____
Date	Wage & Hour Commissioner

TERRITORY OF GUAM
DEPARTMENT OF LABOR, WAGE AND HOUR DIVISION

SPECIAL LICENSE TO EMPLOY: _____
(Name of Employee)

Pursuant to Section 46004 of the Fair Labor Standards, Title XLII, Government Code of Guam Regulation _____ of the Department of Labor, Wage and Hour Division, authorization is granted

(Name of Employer)

to employ _____ as a
(Name of Employee)

_____ at an hourly rate of not less than _____.
(Occupation)

This license shall be effective from _____
(Date, Month, Year)

to _____ unless sooner revoked or cancelled.
(Date, Month, Year)

Date

(Wage and Hour Commissioner)

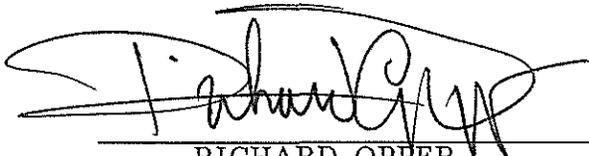


LLOYD L. UMAGAT
Wage and Hour Commissioner
Department of Labor

5/11/84

Date

APPROVED AS TO FORM:

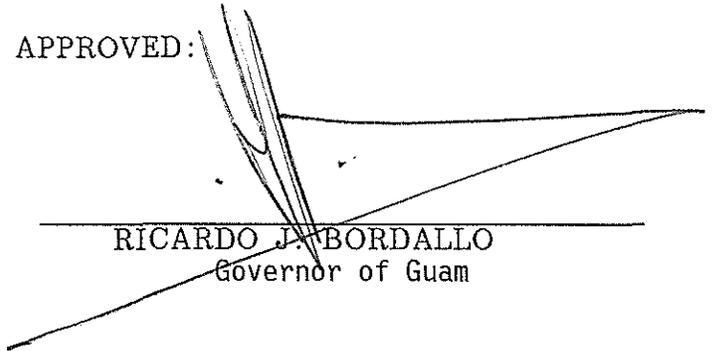


RICHARD OPPER
Attorney General

4/11/84

Date

APPROVED:



RICARDO J. BORDALLO
Governor of Guam

5/11/84

Date

RECEIVED

APR - 2 1984

ba

ATTORNEY GENERAL'S OFFICE

Legal SSU 4/30
HP 5/7

GOVERNMENT OF GUAM
AGANA

APR 24 1984

MEMORANDUM

To: The Governor
From: Director of Labor
Subject: Proposed Rules and Regulations for Handicapped
Workers

Attached for your review and approval are the proposed rules and regulations governing the employment of handicapped workers at subminimum wage and the draft Executive Order necessary for the promulgation of subject proposal.

For your information, public hearings have been held on the above subject matter and all other requirements of law, as per Section 46011GC and Public Law 13-40, have been followed, pending only your approval and filing with the Legislative Secretary.

Lloyd L. Umagat
LLOYD L. UMAGAT

Attachments

