

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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APR 4 9 55 AM '94

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: Department of Administration TITLE NUMBER: 148

AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 10


TITLE OF RULE BEING PROPOSED: Preference for Use of Domestic
Aluminum, Glass or Steel Products in Public Works Projects

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) Senate Bill 143

SECTION 64-2-7 (e), PASSED ON March 10, 1994

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: July 1, 1994



Authorized Signature

Chuck Polan, Cabinet Secretary

3.00

Promulgation History

Filed for Public Comment:	September 2, 1992
Public comment period ended:	October 5, 1992
Filed following comment period:	October 6, 1992
Filed with LRMRC:	October 6, 1992
Filed Notice of Rule Modification of a Proposed Rule:	July 14, 1993
Filed with LRMRC:	July 14, 1993

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TITLE 148
LEGISLATIVE RULES
WEST VIRGINIA DEPARTMENT OF ADMINISTRATION OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

OFFICE OF THE SECRETARY

SERIES 10
PREFERENCE FOR USE OF DOMESTIC ALUMINUM,
GLASS OR STEEL PRODUCTS IN PUBLIC WORKS PROJECTS

§148-10-1. General.

1.1. Scope. -- This legislative rule is an explanation and clarification of procedures for the purchase of aluminum, glass and steel used in public works projects.

1.2. Authority. -- See West Virginia Code §5-19-2.

1.3. Filing Date. --

1.4. Effective Date. --

§148-10-2. Definitions.

2.1. "Aluminum, glass and steel products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated, or otherwise similarly processed from aluminum, glass and steel.

2.2. "Bidder or Contractor" means the entity submitting a bid or offer or the entity receiving a contract or purchase order from a state spending unit.

2.3. "Domestic aluminum, glass and steel products" means aluminum, glass and steel products made in the United States.

2.4. "Foreign aluminum, glass and steel products" means aluminum, glass and steel products not made in the United States.

2.5. "Public works" includes roads, highways, streets, bridges, sidewalks, sewage systems, buildings, engineering and architectural works, and any other structure, facility or improvement constructed or undertaken by a public agency.

2.6. "Spending officer" means the executive head of a

spending unit, or a person designated by him.

§148-10-3. Applicability.

This legislative rule shall apply to every public works project estimated to cost in excess of fifty thousand dollars using aluminum, glass or steel, or to any public works project estimated to require more than ten thousand pounds of steel.

§148-10-4. Preference.

4.1 All contracts or subcontracts entered into by a spending unit for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works shall require aluminum, glass or steel products supplied in the performance of the contract or subcontract be domestic aluminum, glass or steel products, unless, after receipt of the bids or offers, the spending officer determines in writing that:

(a) the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the best interest of the State of West Virginia, or

(b) there is not sufficient quantities of domestic aluminum, glass or steel readily available to meet the contract requirements, or

(c) the available domestic aluminum, glass or steel do not meet the contract specifications.

4.2 Preference under this rule may be granted on a single contract or a single public works contract and may be granted on multiple contracts or multiple public works contracts, nor any combination thereof.

4.3 Preference shall be applied to an item of machinery or equipment when the item is a single unit of equipment or machinery manufactured primarily of aluminum, glass or steel, is part of a public works contract and has the sole purpose or of being a permanent part of a single public works project. This rule does not apply to equipment or machinery purchased by a spending unit for use by that spending unit and not as part of a single public works project.

§148-10-5. Unreasonable bid or offer price.

5.1 The bid or offer price contemplated in §148-10-4.1(a) of this rule is not unreasonable if the bid or offer price does not exceed the bid or offer price of foreign aluminum, glass or

steel by twenty per cent (20%).

5.2 The bid or offer price contemplated in §148-10-4.1(a) of this rule is not unreasonable if the bid or offer price does not exceed the bid or offer price of foreign aluminum, glass or steel by thirty per cent (30%) if the aluminum, glass or steel is produced in a "substantial labor surplus area," as defined by the United States Department of Labor.

§148-10-6. Lowering Bid or Offer Price.

All bids and offers including domestic aluminum, glass or steel products that exceed bid or offer prices including foreign aluminum, glass or steel products after application of the preferences provided in this rule may be reduced to a price equal to or lower than the lowest bid or offer price for foreign aluminum, glass or steel products plus the applicable preference. If the reduced bid or offer prices are made in writing and supersede the prior bid or offer prices, all bids or offers, including the reduced bid or offer prices, will be reevaluated in accordance with this rule.

§148-10-7. Contractor Certification.

Before payment is made under a contract to which the preference provisions of this rule have been applied, the contractor shall supply sworn certificates of origin of the aluminum, glass or steel used to the public agency. Payments made to a contractor who did not comply with the requirement that the aluminum, glass or steel is of domestic origin may be recovered by such public agency.

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H. B. 4233

(By Delegates Gallagher, Douglas, Compton,
Huntwork, Burk and Faircloth
(Introduced January 31, 1994; referred to the
Committee on Finance then the Judiciary)

10 A BILL to amend and reenact section seven, article two, chapter
11 sixty-four of the code of West Virginia, one thousand nine
12 hundred thirty-one, as amended, relating to authorizing the
13 secretary of the department of administration to promulgate
14 legislative rules relating to the use of domestic aluminum,
15 glass or steel products in public works projects.

16 Be it enacted by the Legislature of West Virginia:

17 That section seven, article two, chapter sixty-four of the
18 code of West Virginia, one thousand nine hundred thirty-one, as
19 amended, be amended and reenacted, to read as follows:

20 ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRATION TO
21 PROMULGATE LEGISLATIVE RULES.

22 §64-2-7. Secretary of the department of administration.

23 (a) The legislative rules filed in the state register on the
24 twenty-sixth day of September, one thousand nine hundred ninety,

4233

1 modified by the secretary of the department of administration to
2 meet the objections of the legislative rule-making review
3 committee and refiled in the state register on the twenty-fourth
4 day of January, one thousand nine hundred ninety-one, relating to
5 the secretary of the department of administration (plan of
6 operation for the information and communication services
7 division), are authorized.

8 (b) The legislative rules filed in the state register on the
9 twenty-sixth day of September, one thousand nine hundred ninety,
10 modified by the secretary of the department of administration to
11 meet the objections of the legislative rule-making review
12 committee and refiled in the state register on the twenty-fourth
13 day of January, one thousand nine hundred ninety-one, relating to
14 the secretary of the department of administration (parking), are
15 authorized.

16 (c) The legislative rules filed in the state register on the
17 twenty-sixth day of September, one thousand nine hundred ninety,
18 modified by the secretary of the department of administration to
19 meet the objections of the legislative rule-making review
20 committee and refiled in the state register on the twenty-fourth
21 day of January, one thousand nine hundred ninety-one, relating to
22 the secretary of the department of administration (leasing space
23 on behalf of state spending units), are authorized.

24 (d) The legislative rules filed in the state register on the
25 nineteenth day of June, one thousand nine hundred ninety-one,

1 modified by the secretary of the department of administration to
2 meet the objections of the legislative rule-making review
3 committee and refiled in the state register on the thirtieth day
4 of August, one thousand nine hundred ninety-one, relating to the
5 secretary of the department of administration (reporting of state
6 assets by financial institutions), are authorized.

7 (e) The legislative rules filed in the state register on the
8 sixth day of October, one thousand nine hundred ninety-two,
9 modified by the secretary of the department of administration to
10 meet the objections of the legislative rule-making review
11 committee and refiled in the state register on the fourteenth day
12 of July, one thousand nine hundred ninety-three, relating to the
13 secretary of the department of administration (use of domestic
14 aluminum, glass or steel products in public works projects), are
15 authorized.

16

17 NOTE: The purpose of this bill is to authorize the Secretary
18 of the Department of Administration to promulgate legislative
19 rules relating to the use of domestic aluminum, glass or steel
20 products in public works projects.

21

22 Strike-throughs indicate language that would be stricken from
23 the present law, and underscoring indicates new language that
24 would be added.

SENATE BILL NO. 143

(By Senators Manchin, Anderson, Grubb, Macnaughtan
and Mirard)

[Introduced January 31, 1994; referred to the
Committee on

EIM

Judiciary

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23 the present law, and underscoring indicates new language that
24 would be added.



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

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Executive Assistant

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Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

TO: Diane Stout

AGENCY: Administration

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: April 8, 1994

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

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

SERIES: 10 TITLE: 148 Administration

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: Diane Stout

TITLE OF PERSON SIGNING: General Counsel

DATE: 4/11/94

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

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

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

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
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STATE OF WEST VIRGINIA

SECRETARY OF STATE

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Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

March 15, 1994

Diana Stout
Administration
Bldg. 1, Rm. E-119
State Capitol
Charleston, WV 25305

SB 143 authorizing, Title 148, Series 10, Use of Domestic Aluminium, Glass or Steel Products in Public Works Projects, passed the Legislature on **March 10, 1994**. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs SB 143, to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in **SB 143** section **64-2-7-(e)**. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A WORD PERFECT OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM THAT USES A 3 1/2" OR 5 1/4" DISK, YOU MUST SUBMIT A CLEAN COPY, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, TO OUR OFFICE WHEN FINAL FILING THE RULE. STATE ON THE DISK THE FORMAT THE RULE IS IN AND THE TITLE IT IS FILED UNDER. THIS WILL MAKE IT QUICKER FOR US TO ENTER YOUR RULES ON THE LEGISLATIVE DATA BASE. REMEMBER THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE.**

After the final rule is entered into the legislative data base, the rule will be sent to the agency for review and proofing. Following confirmation or corrections, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to call our office.

Thank You
Administrative Law Division