

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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FILED

APR 4 8 49 AM '95

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

COMMITTEE FOR THE PURCHASE OF COMMODITIES
AGENCY: AND SERVICES FROM THE HANDICAPPED TITLE NUMBER: 186-4

AMENDMENT TO AN EXISTING RULE: YES X, NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 186-4

TITLE OF RULE BEING AMENDED: QUALIFICATIONS FOR PARTICIPATION

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

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

AUTHORIZATION IS CITED IN (house or senate bill number) SENATE BILL 133
5A-3A-5 and Article 2, Chapter 64 of
SECTION the Code of W. Va. 1931, PASSED ON March 11, 1995

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: April 4, 1995



AUTHORIZED SIGNATURE
Chuck Polan
Secretary of Administration

TITLE 186
LEGISLATIVE RULES
COMMITTEE
FOR THE PURCHASE OF COMMODITIES
AND SERVICES FROM THE HANDICAPPED

SERIES 4
RULES AND REGULATIONS FOR
QUALIFICATIONS FOR PARTICIPATION

\$186-4-1. General.

1.1. Scope.--The scope of this legislative rule is to set forth the qualifications for participation under the provisions of West Virginia Code, 5A-3-10.

1.2. Authority.--West Virginia Code, § 5A-3A-5.

1.3. Filing Date.--

1.4. Effective Date.--

1.5. Repeal of former rule.--This legislative rule amends WV 186CSR4 "Rules and Regulations for the Qualifications for Participation" filed February 17, 1993 and effective July 1, 1993.

\$186-4-2. Definitions.

The following words and terms, when used in this rule, have the following meanings, unless the context clearly indicates otherwise:

2.1. "Approved Workshops or Rehabilitation Facilities"--means nonprofit organizations which are surveyed by the West Virginia Division of Rehabilitation Services using the "Standards for Community Workshops" established by the West Virginia State Board of Rehabilitation. These organizations are approved by the State Board of Rehabilitation for program participation as evidenced by a certificate of approval.

2.2 "CNA"--means the Central Nonprofit Agency.

2.3. "Certified Workshops or Rehabilitation Facilities"--means nonprofit organizations which apply to the West Virginia Division of Rehabilitation Services for participation in the program and whose documents have been reviewed by the staff of the West Virginia Division of Rehabilitation. These organizations are accepted by the West Virginia State Board of Rehabilitation as evidenced by a certificate of certification.

2.4. "Committee"--means the Committee for the Purchase of Commodities and Services from the Handicapped.

2.5. "Commodities"--means supplies, materials, equipment, contractual services, and any other articles or things used by or furnished to a department, agency or institution of state government.

2.6. "DRS"--means the West Virginia Division of Rehabilitation Services.

2.7. "Qualified Workshops or Rehabilitation Facilities"--means organizations which must be either approved or certified by the West Virginia State Board of Rehabilitation and have been notified by the Committee that they meet all committee qualifications for program participation.

2.8. "Rehabilitation Facility"--means a facility that is operated for the primary purpose of providing vocational rehabilitation services to individuals with handicaps and that provides singly or in combination one or more of the following services:

2.8.1. Vocational rehabilitation services, including under one management, medical, psychiatric, psychological, social and vocational services;

2.8.2. Testing, fitting, or training in the use of prosthetic or orthotic devices;

2.8.3. Prevocational conditioning or recreational therapy;

2.8.4. Physical and occupational therapy;

2.8.5. Speech and hearing therapy;

2.8.6. Psychiatric, psychological and social services;

2.8.7. Evaluation of rehabilitation potential;

2.8.8. Personal and work adjustment;

2.8.9. Vocational training with a view toward career advancement (in combination with other rehabilitation services);

2.8.10. Evaluation and control of specific disabilities;

2.8.11. Orientation and mobility services and other adjustment services to blind individuals;

2.8.12. Transitional or extended employment for those individuals with disabilities who cannot be readily absorbed in the competitive labor market;

2.8.13. Psychological rehabilitation services for individuals with chronic mental disabilities; or

2.8.14. Rehabilitation engineering services.

2.9. "Services"--means a product by labor when that product is not considered a tangible commodity. Services include, but are not limited to, janitorial service, printing, food service, microfilming, temporary labor, and grounds maintenance.

2.10. "Workshop"--means a particular type of vocational rehabilitation facility where any manufacture or handiwork is carried on and which is operated by a public agency or by a private corporation or association, no part of the net earning of which inures or may lawfully inure to the benefit of any private shareholder or individual, or by a cooperative, for the primary purpose of providing remunerative employment to disabled persons (a) as an interim step in the rehabilitation process for those who cannot be readily absorbed in the competitive labor market; (b) during such time as employment opportunities for them in the competitive labor market do not exist; or (c) for providing vocational evaluation and work adjustment services for disadvantaged persons.

§186-4-3. Qualification for Program Participation.

3.1. Requirements.--In order for a workshop or rehabilitation facility to qualify for participation in the program under the provisions of West Virginia Code, § 5A-3-10, it shall file the following documents with the Executive Secretary of the Committee for the Purchase of Commodities and Services from the Handicapped, "Committee," and the Central Nonprofit Agency, "CNA":

3.1.1. A letter of application by an officer of the workshop or rehabilitation facility attesting that the workshop or rehabilitation facility:

3.1.1.a. Operates as non-profit entity pursuant to 26 U.S.C. § 501 et seq. or as a State agency which operates in the interest of persons with disabilities, and that no part of its net income inures to the benefit of any shareholder or other individual;

3.1.1.b. Complies with applicable occupational health and safety standards required by the laws of the United States and of this State;

3.1.1.c. Employs persons with disabilities to perform an average of at least 75 % of all direct labor associated with all manufacturing and service labor performed during the previous year. If this condition is not met, a satisfactory plan, including a timetable to achieve this level of utilization of persons with disabilities, must be included with the application;

3.1.1.d. Has an ongoing placement program which includes at least pre-admission evaluation and annual review to determine each worker's capability for normal competitive employment and maintains a liaison with appropriate community services for the placement in such employment of any of its workers qualifying for placement; and

3.1.1.e. Agrees to:

3.1.1.e.A. Furnish commodities or services in strict compliance with contract specifications;

3.1.1.e.B. Make appropriate records available for inspection by the Committee or CNA at any reasonable time;

3.1.1.e.C. Maintain records of direct labor hours performed in the facility by each worker and report monthly, on the approved form, hours worked by type of disability;

3.1.1.e.D. Comply with applicable occupational health and safety standards prescribed by the United States Department of Labor and the State of West Virginia Division of Labor;

3.1.1.e.E. Maintain a file on each person with a disability which includes reports of pre-admission evaluation, and annual re-evaluation of the individual's capacity for normal competitive employment, prepared by a person or persons qualified by training and experience to evaluate the work potential, interest, aptitudes and abilities of handicapped persons;

3.1.1.e.F. Make full disclosure to the CNA of all facts related to the costs, overhead, or profits in the production of a commodity or the provision of a service; and

3.1.1.e.G. Maintain an average utilization of persons with disabilities of at least 75% of all direct labor associated with all manufacturing and services performed by the approved workshop or rehabilitation facility. If this condition cannot be maintained, the approved workshop or rehabilitation facility must submit for Committee approval a plan including a timetable to re-establish and maintain this 75% level of utilization.

3.1.2. A letter of approval from the DRS for participation in the program which attests that the DRS has audited, examined or has on file current documentation of the following items:

3.1.2.a. If workshop or rehabilitation facility is incorporated, a legible copy of the articles of incorporation showing the date of filing and signature of an appropriate State official and a copy of the bylaws certified by an officer of the corporation;

3.1.2.b. A copy of the Internal Revenue Service certificate indicating that the workshop or rehabilitation facility has been accepted as nonprofit for taxation purposes;

3.1.2.c. Evidence that the workshop or rehabilitation facility meets the criteria for determining nonprofit status pursuant to 26 U.S.C. § 501 et seq. and is registered and in good standing as a charitable organization with the Secretary of State pursuant to W. Va. Code, § 29-19-1 et seq.;

3.1.2.d. If sub-minimum wages are to be paid, the current certificate(s) issued by the United States Department of Labor authorizing wage payments pursuant to 29 U.S.C. § 214(c); and

3.1.2.e. A current listing of the names, addresses and phone numbers of officers of the workshop or rehabilitation facility.

3.2. Notification.--The Committee shall review the application letter and the DRS approval letter, and, if acceptable, shall notify the workshop or rehabilitation facility through the CNA of its eligibility to participate in the program.

3.3. Revocation.--The Committee may revoke the rights of any workshop or rehabilitation facility to participate if, at any time, the Committee determines the workshop or rehabilitation facility is not in compliance with all the requirements in Section 3.1 of this rule.

3.3.1. If the CNA recommends the denial of approved status to a workshop or rehabilitation facility, or the revocation or suspension of such status, for failure to comply with this rule or for other good cause, the CNA is to refer the matter to the Committee for review.

3.4. Adverse Small Business Impact.--When the current vendor is a small business and the individual service or commodity contract in question comprises 33% or more of the total annual sales of that business, the current vendor will not be displaced without Committee approval unless the agency requests a change in vendor or the vendor leaves the contract voluntarily. This section

does not prevent the approved workshop or rehabilitation facility from competing in the normal competitive bidding process and winning of a contract at the normal renewal time.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

STEPHEN N. REED
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

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WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

SEP 27 9 20 AM '95
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE
(Please all the volunteer
help we can get)

TO: John L. Parker

AGENCY: Purchase of Comm. & Ser.

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: September 20, 1995

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: 4 TITLE: 186 Purchase of Comm. & Ser.

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: [Signature] Chief Work Center Support Division of Rehabilitation Services

TITLE OF PERSON SIGNING: _____

DATE: September 25, 1995

* 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.

133

SENATE BILL NO. 133

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

[Introduced January 20 , 1995; referred to the
Committee on Health and Human Resources; and
then to the Committee on the Judiciary]

186-4

A BILL to amend and reenact section ten, article two, chapter
sixty-four of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to authorizing the
committee for the purchase of commodities and services from the
handicapped to promulgate legislative rules relating to
qualifications for participation.

Be it enacted by the Legislature of West Virginia

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

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

§64-2-10. Committee for the purchase of commodities and services
from the handicapped.

1 (a) The legislative rules filed in the state register on the
2 eighteenth day of September, one thousand nine hundred ninety-two,
3 modified by the committee for the purchase of commodities and
4 services from the handicapped to meet the objections of the
5 legislative rule-making review committee and refiled in the state
6 register on the seventeenth day of February, one thousand nine
7 hundred ninety-three, relating to the committee for the purchase of
8 commodities and services from the handicapped (procurement list:
9 committee for the purchase of commodities and services from the
10 handicapped), are authorized with amendments set forth below:

11 On page two, subsection 2.9., by striking out the entirety of
12 said subsection and inserting in lieu thereof the following:
13 "'Nonprofit workshops', 'workshops' and 'rehabilitation facility'
14 means an establishment (a) where any manufacture or handiwork is
15 carried on, (b) which is operated either by a public agency or by a
16 cooperative or by a nonprofit private corporation or nonprofit
17 association, in which no part of the net earnings thereof inures, or
18 may lawfully inure, to the benefit of any private shareholder or
19 individual, (c) which is operated for the primary purpose of
20 providing remunerative employment to blind or severely disabled
21 persons who cannot be absorbed into the competitive labor market, and
22 (d) which shall be approved, as evidenced by a certificate of
23 approval, by the state board of vocational education, division of
24 vocational rehabilitation.";

1 On page three, subsection 2.13., by striking out the entirety
2 of said subsection.;

3 On page five, subsection 4.2., by striking out the word
4 "facility" and inserting in lieu thereof the word "workshop";

5 And,

6 On page six, subsection 4.7., by striking out the words
7 'certified or approved'".

8 (b) The legislative rules filed in the state register on the
9 eighteenth day of September, one thousand nine hundred ninety-two,
10 modified by the committee for the purchase of commodities and
11 services from the handicapped to meet the objections of the
12 legislative rule-making review committee and refiled in the state
13 register on the seventeenth day of February, one thousand nine
14 hundred ninety-three, relating to the committee for the purchase of
15 commodities and services from the handicapped (qualifications for
16 participation: committee for the purchase of commodities and
17 services from the handicapped), are authorized with amendments set
18 forth below:

19 "On page one, subsection 2.1., by striking out the entirety of
20 said subsection;

21 On page one, subsection 2.3., by striking out the entirety of
22 said subsection;

23 On page two, subsection 2.7., by striking out the entirety of
24 said subsection;

1 On page two, subsection 2.8., by striking out the entirety of
2 said subsection;

3 On page three, subsection 2.10., by striking out the entirety
4 of said subsection and inserting in lieu thereof the following
5 'Nonprofit workshop', 'workshop' and 'rehabilitation facility' means
6 an establishment (a) where any manufacture or handiwork is carried
7 on, (b) which is operated either by a public agency or by a
8 cooperative or by a nonprofit private corporation or nonprofit
9 association, in which no part of the net earnings thereof inures, or
10 may lawfully inure, to the benefit of any private shareholder or
11 individual, (c) which is operated for the primary purpose of
12 providing remunerative employment to blind or severely disabled
13 persons who cannot be absorbed into the competitive labor market, and
14 (d) which shall be approved, as evidenced by a certificate of
15 approval, by the state board of vocational education, division of
16 vocational rehabilitation.";

17 And,

18 On page four, subdivision 3.1.1.e.D., by striking out the
19 entirety of said subsection and inserting in lieu thereof the
20 following: "To comply with state and federal laws regarding safety
21 standards and wage payment."

22 (c) The legislative rules filed in the state register on the
23 eighteenth day of September, one thousand nine hundred ninety-two,
24 modified by the committee for the purchase of commodities and

1 services from the handicapped to meet the objections of the
2 legislative rule-making review committee and refiled in the state
3 register on the eighteenth day of February, one thousand nine hundred
4 ninety-three, relating to the committee for the purchase of
5 commodities and services from the handicapped (fair market price
6 determinations), are authorized with amendments set forth below:

7 "On page one, subsection 2.1., by striking out the entirety of
8 said subsection.;

9 On page one, subsection 2.2., by striking out the entirety of
10 said subsection.;

11 On page two, subsection 2.10., by striking out the entirety of
12 said subsection.;

13 On page two, subsection 2.11., by striking out the entirety of
14 said subsection.;

15 On page three, subsection 2.14., by striking out the entirety
16 of said subsection and inserting in lieu thereof the following:

17 "'Nonprofit workshop', 'workshop' and 'rehabilitation facility'
18 mean an establishment (a) where any manufacture or handiwork is
19 carried on, (b) which is operated either by a public agency or by a
20 cooperative or by a nonprofit private corporation or nonprofit
21 association, in which no part of the net earnings thereof inures, or
22 may lawfully inure, to the benefit of any private shareholder or
23 individual, (c) which is operated for the primary purpose of
24 providing remunerative employment to blind or severely disabled

1 persons who cannot be absorbed into the competitive labor market, and
2 (d) which shall be approved, as evidenced by a certificate of
3 approval, by the state board of vocational education, division of
4 vocational rehabilitation.";

5 On page four, subdivision 3.3.1., by striking out the last
6 sentence.;

7 And,

8 On page five, subdivision 3.4.1., by striking out the last two
9 sentences."

10 (d) The legislative rules filed in the state register on the
11 fifteenth day of August, one thousand nine hundred ninety-four,
12 modified by the committee for the purchase of commodities and
13 services from the handicapped to meet the objections of the
14 legislative rule-making review committee and refiled in the state
15 register on the fourth day of January, one thousand nine hundred
16 ninety-five, relating to the committee for the purchase of
17 commodities and services from the handicapped (qualifications for
18 participation), are authorized.

19
20 NOTE: The purpose of this bill is to authorize the Committee
21 for the Purchase of Commodities and Services from the Handicapped to
22 promulgate legislative rules relating to qualifications for
23 participation.

24
25 Strike-throughs indicate language that would be stricken from
26 the present law, and underscoring indicates new language that would
27 be added.
28

Bill-Committee, Qualifications

2142
H. B. 2142

162-2
186-4
(By Delegates Gallagher, Douglas, Compton,
Linch, Faircloth and Riggs)
(Introduced January 23, 1995; referred to the
Committee on the Judiciary)

A BILL to amend and reenact section ten, article two, chapter
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10 handicapped), are authorized with amendments set forth below:

11 On page two, subsection 2.9., by striking out the entirety of
12 said subsection and inserting in lieu thereof the following:
13 "'Nonprofit workshops', 'workshops' and 'rehabilitation facility'
14 means an establishment (a) where any manufacture or handiwork is
15 carried on, (b) which is operated either by a public agency or by a
16 cooperative or by a nonprofit private corporation or nonprofit
17 association, in which no part of the net earnings thereof inures, or
18 may lawfully inure, to the benefit of any private shareholder or
19 individual, (c) which is operated for the primary purpose of
20 providing remunerative employment to blind or severely disabled
21 persons who cannot be absorbed into the competitive labor market, and
22 (d) which shall be approved, as evidenced by a certificate of
23 approval, by the state board of vocational education, division of
24 vocational rehabilitation.";

1 On page three, subsection 2.13., by striking out the entirety
2 of said subsection.;

3 On page five, subsection 4.2., by striking out the word
4 "facility" and inserting in lieu thereof the word "workshop";

5 And,

6 On page six, subsection 4.7., by striking out the words
7 'certified or approved'".

8 (b) The legislative rules filed in the state register on the
9 eighteenth day of September, one thousand nine hundred ninety-two,
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3 On page three, subsection 2.10., by striking out the entirety
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16 vocational rehabilitation.";

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18 On page four, subdivision 3.1.1.e.D., by striking out the
19 entirety of said subsection and inserting in lieu thereof the
20 following: "To comply with state and federal laws regarding safety
21 standards and wage payment."

22 (c) The legislative rules filed in the state register on the
23 eighteenth day of September, one thousand nine hundred ninety-two,
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24 providing remunerative employment to blind or severely disabled

1 persons who cannot be absorbed into the competitive labor market, and
2 (d) which shall be approved, as evidenced by a certificate of
3 approval, by the state board of vocational education, division of
4 vocational rehabilitation.";

5 On page four, subdivision 3.3.1., by striking out the last
6 sentence.;

7 And,

8 On page five, subdivision 3.4.1., by striking out the last two
9 sentences."

10 (d) The legislative rules filed in the state register on the
11 fifteenth day of August, one thousand nine hundred ninety-four,
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13 services from the handicapped to meet the objections of the
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KEN HECHLER
Secretary of State

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SECRETARY OF STATE

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Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

March 28, 1995

John L. Parker
Purchase of Comm. & Services
State Capitol Complex
Div. of Rehab. Services
Charleston, WV 25305

SB 133 authorizing, **Title 186, Series 4, Qualifications for participation**, passed the Legislature on **March 11, 1995**. It is was signed by the Governor on March 23, 1995.

You have sixty (60) days after the Governor signs SB 133, 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 133** section **64-2-1**. 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: YOUR AGENCY MUST SUBMIT A CLEAN COPY OF THE LEGISLATIVE RULE ON DISK, WITH ALL UNDERLINING, STRIKE-THROUGHS AND HEADERS/FOOTERS TAKEN OUT, TO OUR OFFICE WHEN FINAL FILING THE RULE. THE DISK MUST BE ON A WORD PERFECT (5.1 OR 5.2 VERSION) OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM 3 1/2" DOUBLE DENSITY DISK. STATE ON THE DISK THE FORMAT THE RULE IS IN AND THE TITLE IT IS FILED UNDER. THIS WILL ENABLE 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, STRIKE-THROUGHS AND HEADERS/FOOTERS 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