

# Form #3

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

AGENCY: Department of Administration TITLE NUMBER: 186

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

ATIVE RULE-MAKING REVIEW COMMITTEE FOR

*[Handwritten Signature]*

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Authorized Signature

*Penney Hall, Chairperson*

**Agency:** Department of Administration  
**Rule Type:** Legislative

**Title Number:** 186  
**Cite Authority:** 5A-3A-5

## **STATEMENT OF CIRCUMSTANCE AND BRIEF SUMMARY**

The Committee for the Purchase of Commodities and Services from the Handicapped proposes revising its Legislative Rules on Participation in order to bring language up-to-date. These rules set the standard for who may and may not participate in what is known as the State Use Program as described in 5A-3-10 of the West Virginia State Code. The Adverse Small Business Impact section of the previous rules have been moved to the Rules and Regulations for Statewide Contract, 186CSR3.

## **Comments**

Comments were received from:

White Way Laundry & Dry Cleaning  
Staige Davis  
1001 Sixteenth Street  
Huntington, West Virginia 25701

Jackson County Developmental Center  
Craig Greening, Executive Director  
112 Industrial Lane  
Millwood, West Virginia 25262

**Agency:** Department of Administration  
**Rule Type:** Legislative

**Title Number:** 186   **Series Number:** 4  
**Cite Authority:** 5A-3A-5

**BRIEF SUMMARY OF COMMENTS RECEIVED;  
AGENCY RESPONSE; AND AMENDMENTS**

The proposed rule changes were sent to all of the Community Rehabilitation Programs in the State and to members of the Governor's Committee for the Purchase of Commodities and Services from the Handicapped. The comments were received only from two organizations. The comments are reflected below:

**Comment 1:** In Section 3.29 should be changed to assure more employment for those persons with disabilities by requiring that 75% of workers with disabilities should work on each statewide contract.

**Agency Response 1:** Many of the contracts provided for under this program are small with only one or two workers; therefore it is impossible for each contract to have the 75% ratio.

**Amendment 1:** No amendment will be made as a result of this comment.

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

SERIES 4  
RULES FOR QUALIFICATIONS FOR PARTICIPATION

FILED

AUG 27 AM 11:23

OFFICE WEST VIRGINIA  
SECRETARY OF STATE**§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 W. Va. Code §5A-3-10.

1.2. Authority. -- W. Va. Code §5A-3A-5.

1.3. Filing Date. -- April 17, 2003.

1.4. Effective Date. -- July 1, 2003.

1.5. Repeal of Former Rule. -- This legislative rule amends W. Va. 184CSR4 "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. "Eligible Rehabilitation and Employment Oriented Organizations"-- means any nonprofit workshop or Community Rehabilitation Program (Qualified CRP) that directly provides or facilitates the provision of vocational rehabilitation services to individuals with disabilities to enable those individuals to maximize their opportunities for employment, including career advancement.

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

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

2.4. "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.

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

2.6. "Functional capability" means an individual's ability to perform certain activities taking into consideration factors such as mobility, communication, self-care, self-direction, work tolerance or work skills. Functional capability can be determined on the basis of an evaluation of rehabilitation potential.

2.7. "Non-profit Workshops" -- shall be defined as stated in W. Va. Code §5A-1-1 and shall also include Qualified Community Rehabilitation Programs.

2.8. "Qualified Community Rehabilitation Programs (CRP)"-- means a Community Rehabilitation Program that has been approved as an acknowledged vendor of rehabilitation services by the Division of Rehabilitation Services, and has been approved as a participant in the state use program by the Committee for the Purchase of Commodities and Services from the Handicapped, as evidenced by meeting all program qualifications, including all appropriate state and federal regulations.

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. "Worker with Disabilities" -- means an individual who has a severe physical, visual or mental disability resulting from injury, disease, or congenital defect, which creates a limiting condition to the person's functional capability to

engage in competitive employment over an extended period of time.

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

3.1. Requirements. -- In order for a Qualified Community Rehabilitation Program to qualify for participation in the program under the provisions of W. Va. Code §5A-3-10, it shall file the following documents with the CNA on behalf of the Committee:

3.1.1. An appropriately signed application, which includes the following attachments:

3.1.1.a. A copy of the Internal Revenue Service letter indicating that the Qualified CRP has been accepted as a nonprofit entity for taxation purposes, or is a state agency which operates in the interest of individuals with disabilities, and that no part of its net income inures to the benefit of any shareholder or other individual.

3.1.1.b. ~~If the Qualified CRP is incorporated, submit~~ A copy of the articles of incorporation showing date of filing and signature of the appropriate state official, if the Qualified CRP is incorporated.

3.1.1.c. Submit A copy of the Qualified CRP's by-laws showing certification by an officer of the corporation.

3.1.1.d. ~~If commensurate wages are paid, submit~~ The current certificate(s) issued by the US Department of labor authorizing wage payments pursuant to 29 U.S.C. § 214(c), if commensurate wages are paid.

3.1.1.e. Submit A copy of the letter showing that the Qualified CRP is registered and in good standing with the Secretary of State as a charitable organization pursuant to WV Code §29019-1.

3.1.1.f. Submit A current listing of the officers of the corporation with names, addresses and telephone numbers.

3.1.2. 3.2. As a part of the application the Qualified CRP will further attest to and adhere to the following conditions:

3.1.2.a. 3.2.1 Recognize the Central Nonprofit Agency has the responsibility to represent qualified ~~Qualified~~ CRP's in dealing with state purchasing agents and other bodies charged with purchasing responsibilities.

3.1.2.b. 3.2.2 Maintain an ongoing placement program which includes at least pre-admission evaluation and an 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.

3.1.2.c. 3.2.3. Furnish commodities and/or services in strict compliance with contract specifications.

3.1.2.d. 3.2.4. Make appropriate records available for inspection by the Committee or the CNA at any reasonable time.

3.1.2.e. 3.2.5. Maintain records of direct labor hours performed and wages earned ~~performed~~ by each worker and reported on the approved quarterly report form(s) from the CNA. ~~Submit these reports in a timely fashion to the CNA.~~

3.1.2.f. 3.2.6. Comply with the applicable occupational health and safety standards prescribed by the US Department of Labor and the State of West Virginia.

3.1.2.g. 3.2.7 Maintain a file on each worker with a disability which includes reports of pre-admission evaluation, and annual re-evaluation of the individual's capacity for normal competitive placement, prepared by a person or persons qualified by training and/or experience to evaluate the work potential, interest, aptitudes and abilities of ~~persons~~ workers with disabilities. This file will also include documentation of disability, and periodic notes related to that individual progress towards competitive placement.

~~3.1.2.h.~~ 3.2.8. Make full disclosure to the CNA of all facts related to the costs, overhead, or profits in the production of a commodity or provision of a service.

~~3.1.2.i.~~ 3.2.9 Maintain an average of 75% ~~disabled workers with disabilities~~ on the sum of all state use contracts. This will be measured by the total of direct labor hours. If this condition cannot be maintained, a plan of correction must be submitted to the committee for their approval, which will establish this 75% level of utilization.

~~3.2.~~ 3.3. 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.~~ 3.4. Revocation. -- The Committee may revoke the rights of any Qualified Community Rehabilitation Program to participate if, at any time, the Committee determines the Qualified Community Rehabilitation Program is not in compliance with all the requirements in Section 3.1 of this rule.

~~3.3.4.~~ 3. If the CNA recommends the denial of approved status to a Qualified Community Rehabilitation Program, 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 a 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 a vendor or the vendor leaves the contract voluntarily. This section does not prevent the approved Qualified Community Rehabilitation Program from competing in the normal competitive bidding process and winning of a contract at the normal renewal time.~~

## APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Rules and Regulations for Qualification for Participation

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: Department of Administration

Address: Penney A. Hall, Chairperson, Committee for the Purchase of Commodities and Services from teh Handicapped, Department of Administration, 1900 Kanawha Blvd., East, State Capitol Building 1, Room 119 E, Charleston, WV 25305

Phone Number: 558-1783 Email: penney.a.hall@wv.gov

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

There will not be any fiscal impact becasue of these rules. These rules set the standard for who may and may not participate in what is known as the State Use Program as described in 5A-3-10 of the West Virginia State Code.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

| FISCAL YEAR                 |                                        |                                     |                                           |
|-----------------------------|----------------------------------------|-------------------------------------|-------------------------------------------|
| Effect of Proposal          | Current Increase/Decrease<br>(use "-") | Next Increase/Decrease<br>(use "-") | Fiscal Year<br>(Upon Full Implementation) |
| 1. Estimated Total Cost     | 0.00                                   | 0.00                                | 0.00                                      |
| Personal Services           |                                        |                                     |                                           |
| Current Expenses            |                                        |                                     |                                           |
| Repairs & Alterations       |                                        |                                     |                                           |
| Assets                      |                                        |                                     |                                           |
| Other                       |                                        |                                     |                                           |
| 2. Estimated Total Revenues | 0.00                                   | 0.00                                | 0.00                                      |

Rule Title: \_\_\_\_\_

Rule Title:

Rules and Regulations for Qualification for Participation

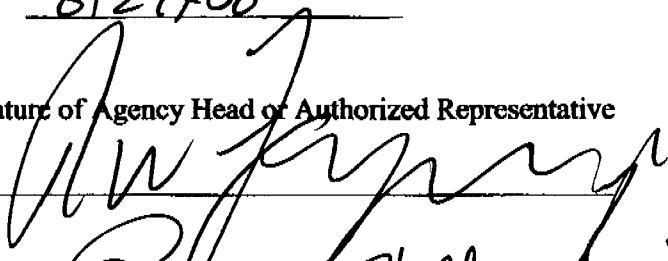
3. **Explanation of above estimates (including long-range effect):**  
Please include any increase or decrease in fees in your estimated total revenues.

### MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

Date: 8/27/05

Signature of Agency Head or Authorized Representative

  
Penny Hall, Chairperson

## QUESTIONNAIRE

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: August 25, 2008

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Department of Administration, Committee for the Purchase  
of Commodities and Services from the Handicapped, 1900  
Kanawha Blvd., East, State Capitol Room E-119,

Charleston, WV 25305  
(304) 558-1783

LEGISLATIVE RULE TITLE: \_\_\_\_\_  
186 CSR4 Qualifications for Participation

1. Authorizing statute(s) citation \_\_\_\_\_  
5A-3A-5

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
July 2, 2008

b. What other notice, including advertising, did you give of the hearing?  
Copies of the proposed rules were sent to all Community Rehabilitation Programs (sheltered  
workshops) who participate in the program.

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
August 1, 2008

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons  
for amendments.

Attached       X       No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

8/27/05

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Penney A. Hall, Chairperson, Committee for the Purchase of Commodities and Services from the Handicapped, Department of Administration, 1900 Kanawha Blvd., East, State Capitol Building 1, Room E-119, Charleston, WV 25305

Phone: (304) 558-1783; Fax: (304) 558-2999; E-mail: penney.a.hall@wv.gov

- g. **IF DIFFERENT FROM ITEM 'f',** please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

The Committee for the Purchase of Commodities and Services from the Handicapped had a subcommittee which provided suggested changes to the original rules and submitted those changes to the full Committee for consideration. The Committee approved the changes, has reviewed the comments and approved the responses.

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A



August 27, 2008

***Via Hand-Delivery***

The Honorable Betty Ireland  
Secretary of State  
Building 1, Suite 157K  
1900 Kanawha Boulevard, East  
Charleston, WV 25305

**Re: Legislative Rules**

Dear Secretary Ireland,

I am enclosing an original and one copy of the documents listed below for filing. The proposed Qualification for Participation in the State Use Program rules are being filed on behalf of the Committee for the Purchase of Commodities and Services from the Handicapped. I will provide a copy of the enclosed documents to the Legislative Rule Making Review Committee once they are marked filed by your office.

The documents enclosed consist of the following:

1. Notice of Agency Approval of a Proposed Rule and Filing with the Legislative Rule-Making committee,
2. Statement of Circumstance and Brief Summary of the rules,
3. Brief Summary of Comments Received, Agency Response, and Amendments,
4. Proposed Rules,
5. Fiscal Note for Proposed Rules, and
6. Questionnaire

Thank you very much for your assistance. If you have any questions, or need any additional information, please do not hesitate to give me a call.

Sincerely,

Penney A. Hall  
Committee Chairperson

**Enclosures**

Joe Manchin, III, Governor  
Penney A. Hall, Chairperson

Pete Cuffaro, Member  
John Liller, Member  
Brenda Morford, Member  
Jan Smith, Member  
Everette Sullivan, Member

Robert W. Ferguson, Jr., Cabinet Secretary  
Evan Williams, Committee Executive Secretary