

**WEST VIRGINIA**

**SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #3

**FILED**

OCT 6 9 10 AM '92

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Department of Administration TITLE NUMBER: 148

CITE AUTHORITY W. Va. Code 5-19-2

AMENDMENT TO AN EXISTING RULE: YES\_\_\_ NO X

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: Use of Domestic Aluminium, Glass or  
Steel Products in Public Works Projects

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

C. Paul

3.20



STATE OF WEST VIRGINIA  
DEPARTMENT OF ADMINISTRATION

State Capitol  
Charleston, WV 25305

Gaston Caperton  
Governor

Chuck Polan  
Secretary

August 31, 1992

Honorable Ken Hechler  
Secretary of State  
Suite 157-K  
Capitol Building  
Charleston, West Virginia 25305

Re: Legislative Rules For Use of Domestic  
Aluminum, Glass or Steel Products in  
Public Works Projects

Dear Mr. Hechler:

Approval is hereby given for filing of the legislative rule,  
entitled "Domestic Aluminum, Glass and Steel in Public Works  
Projects," enclosed in accordance with West Virginia Code  
§5-19-1.

Sincerely,

A handwritten signature in cursive script, appearing to read "Chuck Polan".

Chuck Polan  
Secretary

CP:tj

Attachment

STATEMENT OF THE CIRCUMSTANCES

This rule is to apply to all public works projects to use domestic aluminium, glass or steel products.

## SUMMARY

This rule is to clarify procedures for the purchase of aluminum, glass and steel used in public works projects.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Use of Domestic Aluminium, Glass or Steel in Public Works Projects

Type of Rule: X Legislative          Interpretive          Procedural

Agency Department of Administration Address 1900 Kanawha Blvd., East  
Capitol Complex Building 1, Room E-119 Charleston, WV 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ 0	\$	\$ 0	\$	\$ 0
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates:

3. Objectives of these rules:

Clarification of procedures for the purchase of aluminium, glass and steel used in public work works projects.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

None, as the rule merely clarifies current practice.

C. Economic Impact on Citizens/Public at Large.

None, as the rule merely clarifies current practice.

Date: September 1, 1992

Signature of Agency Head or Authorized Representative

*Jana Stout*

DATE: October 6, 1992

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Department of Administration

LEGISLATIVE RULE TITLE: Use of Domestic Aluminium, Glass or Steel Products  
in Public Works Projects

1. Authorizing statute(s) citation W. Va. Code 5-19-2

2. a. Date filed in State Register with Notice of Hearing:

September 2, 1992

b. What other notice, including advertising, did you give of the hearing?

None

c. Date of hearing (s): None

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

Attached \_\_\_\_\_ No comments received X

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

October 5, 1992

f. Name and phone number of agency person to contact for additional information:

Diana Stout, General Counsel

Department of Administration

1900 Kanawha Blvd. East Building 1

Room E-119 Capitol Complex

Charleston, WV 25305

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: 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

TITLE 148  
LEGISLATIVE RULES  
WEST VIRGINIA DEPARTMENT OF ADMINISTRATION

RECEIVED  
1992 SEP -2 AM 10 13  
OFFICE OF THE SECRETARY

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.

2.7. "Spending unit" means a department, agency or institution of the State of West Virginia for which an appropriation is requested, or to which an appropriation is made by the Legislature.

#### §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 Each and every contract or subcontract 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 contain a provision that if any aluminum, glass or steel products are to be supplied in the performance of the contract or subcontract that it shall use 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 is not intended to mean multiple contracts or multiple public works contracts, nor any combination thereof in an effort to gain preference.

4.3 For preference to be applied under this rule to an item of machinery or equipment, the item must be a single unit of equipment or machinery manufactured primarily of aluminum, glass or steel, must be part of a public works contract and must have as its sole purpose use in or being a permanent part of a single public works project. Equipment or machinery purchased by a spending unit for use by that spending unit and not as part of a single public works project is exempt from application of this rule.

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

5.1 The bid or offer price contemplated in §148-10-4(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(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.**

Each bid or offer including domestic aluminum, glass or steel products that exceeds a bid or offer price 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 spending unit. 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 spending unit.