

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
KEN HECHLER  
**ADMINISTRATIVE LAW DIVISION**

Form #4

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

AGENCY: Department of Administration TITLE NUMBER: 148

CITE AUTHORITY West Virginia 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: Preference For Use of Domestic

Aluminum, Glass or Steel Products in Public Works Projects

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

  
\_\_\_\_\_  
Chuck Polan, Cabinet Secretary

7.80

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148 CSR 10

JUN 14 11 13 AM '93

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.

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

4.3 ~~For preference to~~ shall be applied under this rule to an item of machinery or equipment, when the item ~~must be~~ is a single unit of equipment or machinery manufactured primarily of aluminum, glass or steel, ~~must be~~ is part of a public works contract and ~~must have as its~~ has the sole purpose ~~use in 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 ~~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~~ All bids ~~or~~ and offers including domestic aluminum, glass or steel products that exceed ~~a~~ 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 ~~spending unit~~ 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 ~~spending unit~~ public agency.

