

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #2

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2011 MAY 31 PM 3:46

OFFICE OF THE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: Department of Administration, Purchasing Division TITLE NUMBER: 148

RULE TYPE: Legislative CITE AUTHORITY: 5A-3-59

AMENDMENT TO AN EXISTING RULE: YES  NO

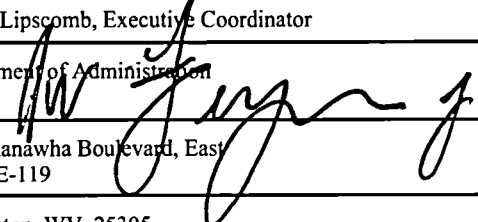
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 22

TITLE OF RULE BEING PROPOSED: Certification for small, women and minority-owned businesses

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 1, 2011 AT 9:00 a.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Donna Lipscomb, Executive Coordinator  
Department of Administration  
  
1900 Kanawha Boulevard, East  
Room E-119  
Charleston, WV 25305  
304-558-3392  
donna.m.lipscomb@wv.gov

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

  
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

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

**Title Number:** 148  
**Cite Authority:** 5A-3-59

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

The Department of Administration proposes to promulgate legislative rules in order to explain the procedures for becoming a certified small, women, or minority-owned business. The rules are being promulgated as a result of House Bill 4582 which passed during the 2010 legislative session.

Specifically, the rules provide definitions; identifies the certification process; prohibits false or misleading information; describes who is eligible; outlines the procedures for renewal of certification; allows for evaluation of local, state, private sector and federal certification programs; describes procedures for certification of business previously certified by other qualifying programs; addresses both approval and denial of certification; and describes revocation, re-application and jeopardizing of federal funds.

TITLE 148  
DEPARTMENT OF ADMINISTRATION

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SERIES 22  
CERTIFICATION FOR SMALL, WOMEN AND  
MINORITY-OWNED BUSINESSES

OFFICE OF THE VIRGINIA  
SECRETARY OF STATE

**§148-2-1. General.**

1.1. Scope. -- This Legislative Rule is an explanation of the small, women and minority-owned business certification program and preference established by the Department of Administration and administered by the Purchasing Division of the Department of Administration.

1.2. Authority. -- W. Va. Code 5A-3-59.

1.3. Filing Date. --

1.4. Effective Date. --

**§148-2-2. Definitions.**

As used in this rule, all terms have the same meaning as provided in W.Va. Code §5A-1-1 and 5A-3-59, et seq. and as follows:

2.1. "Bid" means an offer to perform contracting services or to supply commodities or printing at a specified price.

2.2. "Certification" means the process by which a business is determined to be a small, women or minority-owned business for the purpose of affording a non-resident vendor bidding on the purchase of commodities or printing a vendor preference.

2.3. "Certified" means the status accorded to an applicant upon the determination that the applicant has satisfied the requirements for certification as a small, women or minority-owned business.

2.4. "Code" means the Code of West Virginia of 1931, as amended.

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

government.

2.6. "Director" means the Director of the Purchasing Division of the State of West Virginia, Department of Administration, or his delegate.

2.7. "Division" means the Division of Purchasing of the State of West Virginia, Department of Administration.

2.8. "Minority individual" means an individual who is a citizen of the United States or a noncitizen who is in full compliance with United States immigration law and who satisfied one or more of the following definitions:

2.8.1. "African American" means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.

2.8.2. "Asian American" means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands, including, but not limited to, Japan, territory of the Pacific, India, Pakistan, Bangladesh or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.

2.8.3. "Hispanic American" means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.

2.8.4. "Native American" means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.

2.9. "Minority-owned business" means a business concern that is at least fifty-one percent owned by one or more minority individuals or in the case of a corporation, partnership, or limited liability company or other entity, at least fifty-one percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals.

2.10. "Printing" means printing, binding, ruling, lithographing, engraving and other similar services.

2.11. "Small business" means a business, independently owned or operated by one or more persons who are citizens of the United States or noncitizens who are in full compliance with United States immigration law, which, together with affiliates, has two hundred fifty or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years.

2.12. "State agency" means any authority, board, department, instrumentality, institution, agency, or other unit of state government. "State agency" does not include any county, city or town.

2.13. "Women-owned business" means a business concern that is at least fifty-one percent owned by one or more women who are citizens of the United States or noncitizens who are in full compliance with United States immigration law, or in the case of a corporation, partnership or limited liability company or other entity, at least fifty-one percent of the equity ownership interest is owned by one or more women who are citizens of the United States or noncitizens who are in full compliance with United States immigration law, and both the management and daily business operations are controlled by one or more women who are citizens of the United States or noncitizens who are in full compliance with United States immigration law.

2.14. "Vendor" means any person, whether selling at retail or otherwise, engaged in furnishing or rendering services, selling commodities or furnishing printing.

#### **§148-2-3. Certification.**

3.1. Applications to be certified as a small, women or minority-owned business are available from and must be submitted to the West Virginia Purchasing Division at its principal place of business or through the division's website, if available.

3.2. A business may withdraw its application for certification without prejudice at any time prior to the Division's determination. The request to withdraw the application must be made in writing and addressed to the Director.

3.3. A list of all certified businesses shall be maintained by the Director and shall, at all proper times, be available for inspection by the public.

**§148-2-4. False or Misleading Information.**

Any applicant that knowingly provides false or misleading information on its application for certification shall be denied certification and shall not be permitted to reapply for certification.

**§148-2-5. Eligible Businesses.**

The Division shall certify a non-resident business if:

(1) It meets the applicable eligibility standards for certification as a small, women or minority-owned business; and

(2) The state in which the business has its principal place of business does not deny a like certification to a West Virginia-based small, women or minority-owned business or provide a preference to small, women or minority-owned firms that is unavailable to West Virginia-based businesses.

**§148-2-6. Exception from Resident Vendor Preference.**

The vendor preferences found in West Virginia Code section 5A-3-37 shall not be applied between or among West Virginia resident vendors and non-resident small, women and minority-owned business vendors.

**§148-2-7. Procedures for Renewal of Certification.**

To maintain its certification, a certified business must apply to renew its certification prior to the end of a two-year certification period using the forms and procedures specified by the Division. The certification of a business that fails to apply for renewal prior to the end of the two-year certification period shall terminate automatically on the expiration of the certification. Meeting the deadline for certification renewal is the responsibility of the business applying. Should a business allow its certification to lapse, the business will be unable to claim the small, women and minority-owned preference until such time it successfully renews its certification.

**§148-2-8. Evaluation of Local, State, Private Sector and Federal Certification Programs; Procedures for Certification of Business Previously Certified by Other Qualifying Programs.**

8.1. The Division may, at its discretion, evaluate any local, state, private sector or federal certification program to determine whether it meets the minimum requirements for certification of small, women and minority-owned businesses as set forth in the Code and these regulations.

8.2. Should the Division determine that a non-resident vendor is certified by a local, state, private sector or federal certification program, and that such certification program meets with the requirements established in the Code and these regulations, that business shall be certified as a small, women or minority-owned business in West Virginia, without additional paperwork, upon presentation to the Division of documentation that it has received such certification and that the certification has not expired.

**§148-2-9. Approval of Certification.**

The Division shall notify the applicant if its application for certification is approved no later than fifteen working days from the date of the decision made by the Division.

**§148-2-10. Denial of Certification.**

8.1. The Division may deny an application for certification for any of the following reasons:

(1) The Division determines that the applicant fails to meet the standards for certification;

(2) The applicant fails to furnish the Division with requested information within the allotted time; or

(3) The applicant knowingly provides false or misleading information to the Division.

8.2. The Division shall notify the applicant of the denial of its application for certification no later than fifteen working days from the date of the decision made by the Division.

**§148-2-11. Revocation.**

If Director shall investigate applications for certification when any portion of an application is questioned. If it is determined that a business fails to meet a requirement for the requested certification, the Secretary, or the Director at the direction of

the Secretary may revoke the certification of that business if it is found that the business no longer qualifies as a small, women or minority-owned business.

**§148-2-12. Reapplication.**

A business whose application for certification has been denied may reapply for the same category of certification twelve (12) months after the date on which the business receives the notice of denial. An applicant denied certification as a women or minority-owned business may reapply for certification as a small business without delay if otherwise eligible.

**§148-2-13. Jeopardizing Federal Funds.**

If any portion of these regulations jeopardizes the receipt of federal funds, then such portion shall be waived as being void and of no force and effect as such regulation pertains to the project.

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Title 148, Series 2

Type of Rule:  X  Legislative   Interpretive   Procedural

Agency: Department of Administration

Address: 1900 Kanawha Boulevard, East  
Capitol Complex, Room E-119  
Charleston, WV 25305

Phone Number: 304- 558-3392 Email: donna.m.lipscomb@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 should be no fiscal impact as a result of this rule. House bill 4582 passed during the 2010 legislative session which established the program. The rules are being promulgated as a result of the bill and would not have any fiscal impact to the State of West Virginia.

**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.

<b>FISCAL YEAR</b>			
Effect of Proposal	2010 Increase/Decrease (use "-")	2011 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>			0
Personal Services			0
Current Expenses			0
Repairs & Alterations			0
Assets			0
Equipment			0
Other			0
<b>2. Estimated Total Revenues</b>			0

Rule Title: Certification for small, women and minority-owed businesses

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

There should be no fiscal impact to the State of West Virginia as a result of the passage of these legislative rules.

### 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: 5/31/11

Signature of Agency Head or Authorized Representative

