



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

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Office of West Virginia  
Secretary Of State

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**NOTICE OF PUBLIC COMMENT PERIOD**

AGENCY: Highways TITLE-SERIES: 157-04

RULE TYPE: Procedural Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: PURCHASE AND DISPOSAL OF MATERIALS,  
EQUIPMENT AND SUPPLIES

CITE STATUTORY AUTHORITY: W.Va. Code §17-2A-24.

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 08/26/2024 4:00

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Rita Pauley

ADDRESS: Capital Complex, Building 5, Room 110

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PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

This procedural relate rule relates to the purchase and disposal of materials, equipment and supplies of the division of Highways. It provides the process of disposing of materials, equipment and supplies through sale, auction, trade, and exchange.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

this rule has not been updated since 2007. The current upates reflect current practices and revisions to the Department of Administration's Purchasing statute.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

N/A

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

N/A

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

N/A

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2024 Increase/Decrease (use "-")	2025 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
<b>2. Estimated Total Revenues</b>	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

N/A

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.**

Yes

**Rita A Pauley -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

TITLE 157  
PROCEDURAL RULES  
DEPARTMENT OF HIGHWAYS

SERIES 4  
PURCHASE AND DISPOSAL OF MATERIALS,  
EQUIPMENT AND SUPPLIES

**§157-4-1. General.**

1.1. Scope. -- ~~These This procedural rules and regulations relate~~ rule relates to the purchase and disposal of materials, equipment and supplies of the division of Highways. It provides the process of disposing of materials, equipment and supplies through sale, auction, trade, and exchange.

1.2. Authority. -- W. Va. Code ~~§§17-24-8, 14, 15, 24 and 35~~ §17-2A-24.

1.3. Filing Date. -- ~~August 22, 2007.~~

1.4. Effective Date. -- ~~September 22, 2007.~~

**§157-4-2. Purchase of Materials, Equipment and Supplies; Registration of Vendors.**

2.1. General. The purchase of materials, equipment and supplies required for the state road program and system is governed by statute. ~~(See Chapter 5A, Article 3, Code, Chapter 17, Article 2A, Sections 8, 13, 15 and 17, Code, Chapter 17, Article 4, Section 19, Code §17-4-19, §5A-3-1 et seq., §17-2A-8, §17-2A-13, §17-2A-15, and §17-2A-17).~~ Handbook of Purchasing Procedures, compiled by the Purchasing Division of Department of Finance and Administration, as it applies to the Department of Highways. The requirements as to registration of vendors are specified by statute. ~~(See Chapter 5A, Article 3, Section 14a, Chapter 17, Article 2A, Section 16, Code §5A-3-12, and §17-2A-16).~~

**§157-4-3. Disposition of Materials, Equipment and Supplies.**

3.1. Manner of Disposition. ~~Obsolete and unusable equipment, surplus supplies and other unneeded materials may be disposed of either by transfer to other governmental agencies or institutions, including the State Agency for Surplus Property by exchange or trade, or by sale as junk or otherwise. (Reference, Chapter 17, Article 2A, Sections 8 (35) and 14, Code. See also, Chapter 5A, Article 3, Section 23, Code §17-2A-8(35), §17-2A-14, §5A-3-44, and §5A-3-45).~~

3.2. Obsolete Equipment, Surplus Supplies, Unneeded Materials. Prior to the disposition of obsolete and unusable equipment, surplus supplies, and other unneeded materials, the Highways Commissioner or his designee shall make a finding that ~~such~~ the equipment is obsolete or unusable, or that such supplies and materials are surplus and not needed for road purposes.

3.3. Inventory Report. The Commissioner shall inventory all disposable materials, equipment and supplies from time to time as quantity and stocks may warrant, but shall make a complete semi-annual inventory thereof as of the 31st day of March and the 30th day of September of each year.

(1) ~~Such~~ The inventory shall briefly describe the disposable items, the purchase price paid therefore, and a brief statement of the reasons ~~said~~ the items are no longer needed or can no longer be used by the ~~Department~~ Division.

(2) All ~~such~~ inventories shall be kept as public records open to public inspection.

3.4. Notice to State Agencies, Counties, Municipalities; Priority. Prior to ~~the~~ offering the transfer, sale, exchange or trade of ~~such~~ obsolete or unusable equipment, supplies or material to the general public, notice shall be given to all state agencies and state institutions, and counties and municipalities in the area where ~~such~~ the sale is to be made, of the ~~proposed disposition of such~~ equipment, supplies, and materials. First priority to purchase ~~same~~ shall such materials will be given to state agencies and institutions and thereafter to the counties and municipalities, respectively. In lieu of offering obsolete or unusable equipment, supplies or material to governmental entities or the public, it may be transferred to the State Agency for Surplus Property for disposal.

3.5. Sale to Other Public Body; Price. The sale, transfer, exchange or trade of ~~such~~ equipment, supplies and materials to state agencies or institutions, counties and municipalities may be made without public advertisement and shall be based on the lowest possible market price therefore taking into consideration the purchase price paid for ~~such~~ the equipment, supplies and materials, less the depreciation thereon, the average price of auction sales and other prior sales of the same or similar product. The Director of the Equipment Division, or designee, must approve all sales before they become final.

3.6. Public Sale; Notice. If any obsolete or unusable equipment, or surplus or unneeded materials or supplies cannot be sold or otherwise transferred to another governmental agency, within a reasonable time, as provided for in ~~these regulations such~~ this rule, the equipment, materials or supplies shall be offered for sale at public auction. The public auction may be conducted at a physical location, specified by the Director of the Equipment Division, electronically over the Internet or by telephone, or by any combination of these means. Notice of the time and place of the physical auction ~~and/or,~~ the Internet address of the electronic auction, or other means of sale shall be published once each week for at least two successive weeks prior to the date of the proposed sale. In the case of an auction conducted in whole or in part at a physical location, notice shall be published in a newspaper of general circulation in the county where the sale is to be held. In the case of an auction conducted in whole or in part electronically or telephonically, notice shall be published on the Internet and in a newspaper of statewide circulation. Auctions may also be advertised in ~~such~~ other newspapers and other news media, or in such other manner, as circumstances dictate or may be deemed necessary and desirable.

(1) Mailing List The Commissioner or his or her representative shall maintain a mailing list of all persons interested in bidding at any such sale, and shall mail a written or electronic notice of the time and place or Internet address of such sale to all such persons at least two weeks prior to the date of the sale. Any person interested in such notice may request that his or her name and address be placed on the mailing list, and all ~~such~~ notices will be sent to him or her in the future.

3.7. Bidders; Prequalifications. All persons who wish to become bidders on any of the equipment, materials or supplies provided for in this section ~~of these regulations~~ shall first complete an application form and deposit it with the Commissioner or ~~his~~ duly authorized representative. The form and bidder registration processing may also be offered on the Internet Auction website.

3.8. Payment for and Removal of Equipment, Materials and Supplies; Passage of Title; Forfeiture of Deposit. Title shall pass to the high bidder on any equipment, materials or supplies offered for sale at public auction, as provided herein, upon payment in full of the amount of the high bid for a single item, or in the case of more than one item, upon payment in full of the high bid for ~~each, every and~~ all items, within ~~thirty (30)~~ 10 days from the date of ~~such the~~ public auction, and upon removal of ~~any, each and~~ all such items purchased, within ~~thirty (30)~~ 10 days from the date of ~~such~~ the public auction. In the event the high bidder ~~shall fail~~ fails to pay the purchase price in full for ~~each, any and all such~~ all items purchased, and remove ~~the same them~~ within ~~thirty (30)~~ 10 days from the date of ~~said the~~ public auction, the executory contract of sale entered into ~~thereat~~ shall be null, void and of no effect. Any bidder who fails to pay for or remove equipment as required by ~~the preceding~~ this section shall be placed on a restricted bidder's list for future auctions. A restricted bidder shall be required to provide a \$5,000 deposit to participate in future auctions. Provided, however, that the Commissioner may in his or her discretion extend the time for payment or removal of ~~such the~~ item or items, where written request is made for such an extension, and in the judgment of the Commissioner good and sufficient cause exists for granting such an extension.

3.9. Exchange or Trade of Equipment, Materials or Supplies. In the event obsolete or unusable equipment or surplus or unneeded materials or supplies are exchanged or traded, the Commissioner shall have the item or items owned by the ~~Department~~ Division appraised by a competent person, ~~and such~~; the appraisal shall serve as a guide in the negotiation of the trade or exchange.