

**WEST VIRGINIA  
SECRETARY OF STATE  
BETTY IRELAND  
ADMINISTRATIVE LAW DIVISION**

Form #2

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2007 JUN 29 AM 11:39

SECRETARY OF STATE

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

AGENCY: Department of Transportation, Division of Highways TITLE NUMBER: 157

RULE TYPE: Procedural CITE AUTHORITY: §17-24-8, 14, 15, 24 and 35

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 4

TITLE OF RULE BEING AMENDED: Purchase and Disposal of Materials, Equipment  
and Supplies

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

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

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 August 6, 2007 AT 12:00 P.M. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Robert Andrew  
WV Division of Highways  
P.O. Box 610  
Buckhannon, WV 26201

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

  
Secretary of Transportation/  
Commissioner of Highways

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Division of Highways, Series 4  
Purchase and Disposal of Materials,  
Equipment and Supplies  
Proposed Amendments to a Procedural Rule  
June 27, 2007

SUMMARY OF PROPOSED RULE:

Series 4 provides general rules for the purchase and disposal of materials, equipment and supplies the Division of Highways uses in its day to day operations. This rule includes: purchase of materials, equipment and supplies, registration of vendors and disposition of materials, equipment and supplies.

STATEMENT OF CIRCUMSTANCES:

This rule filing provides the Division of Highways the option of conducting its public auction of surplus materials, supplies and unusable equipment at a physical location, electronically over the Internet or by telephone or by any combination of these means. In addition this filing will allow the Division of Highways to electronically notify and register bidders.

APPENDIX B  
**FISCAL NOTE FOR PROPOSED RULES**

**Rule Title:** Series 4, Purchase and Disposal of Materials, Equipment and Supplies

**Type of Rule:**     Legislative         Interpretative         Procedural

**Agency:** Division of Highways

**Address:** P.O. Box 610  
Buckhannon, WV 26201

**Phone Number:** 304-473-5500        **Email:** randrew@dot.state.wv.us

**Fiscal Note Summary**

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

These rule changes do not impact costs and revenues of the state government.

**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	Current Increase/Decrease (use " ")	Next Increase/Decrease (use " ")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs & Alterations	0	0	0
Assets	0	0	0
Equipment	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

Rule Title: Purchase and Disposal of Materials, Equipment and Supplies

3. **Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues:

These rule changes do not impact any annual or fiscal year costs.

**MEMORANDUM**

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

Date: June 27, 2007

Paul D. Mathis, Jr.  
Secretary of Transportation/Commissioner of Highways

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TITLE 157  
PROCEDURAL RULES  
DEPARTMENT OF HIGHWAYS

OFFICE OF THE CLERK  
SECRETARY OF STATE

SERIES 4  
PURCHASE AND DISPOSAL OF MATERIALS,  
EQUIPMENT AND SUPPLIES

**§157-4-1. General**

1.1. Scope. -- These procedural rules and regulations relate to the purchase and disposal of materials, equipment and supplies.

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

1.3. Filing Date. --

1.4. Effective Date. --

**§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. (Sec Chapter 5A, Article 3, Code, Chapter 17, Article 2A, Sections 8, 13, 15 and 17, Code, Chapter 17, Article 4, Section 19, Code). 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).

**§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, 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).

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

(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 of 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 sale is to be made, of the proposed disposition of such equipment, supplies, and materials. First priority to purchase same shall be given to state agencies and institutions and thereafter to the counties and municipalities,

respectively.

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 therefor taking into consideration the purchase price paid for such equipment, supplies and materials, less the depreciation thereon.

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 equipment, materials or supplies shall be offered for sale at public auction. The public auction may be conducted at a physical location, electronically over the Internet or by telephone, or by any combination of these means. Notice of the time and place of ~~such sale~~ the physical auction and/or the Internet address of the electronic auction 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, notice shall be published on the Internet and in a newspaper of statewide circulation. ~~Said sales~~ 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. ~~All such applicants shall deposit a minimum sum of one hundred dollars (\$100.00) with the Commissioner at the time the bidder's application form is submitted to the Commissioner or his representative, unless such deposit is specifically waived in writing by the Commissioner.~~

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) days from the date of such public auction, and upon removal of any, each and all such items, within thirty (30) days from the date of such public auction. In the event the high bidder shall fail to pay the purchase price in full for each, any and all such items, and remove the same within thirty (30) days from the date of said public auction, the executory contract of sale entered into thereat shall be null, void and of no effect, ~~and the deposit provided for in Section 3.07 hereof shall be forfeited as liquidated damages for the bidder's failure to perform his obligations.~~ Any bidder who fails to pay for or remove equipment as required by the preceding 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 discretion extend the time for payment or

removal of such item or items, where written request is made for such extension, and in the judgment of the Commissioner good and sufficient cause exists for granting such 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 appraised by a competent person, and such appraisal shall serve as a guide in the negotiation of the trade or exchange.