

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

Form #3

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2010 JUL 30 AM 9:06

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

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

CITE AUTHORITY: WV Code 17-2A-4-8(35), 14, 15, 23 and 17-24-4

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Four

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: _____

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.


Authorized Signature

Division of Highways, Series 4
Purchase and Disposal of Materials, Equipment, and Supplies
Proposed Amendments to a Legislative Rule

July 29, 2010

SUMMARY OF PROPOSED RULE:

Series 4 provides general rules pertaining to the purchase and disposal of materials, equipment and supplies.

STATEMENT OF CIRCUMSTANCES:

This rule filing is being submitted to add rules and regulations relating to equipment repair services.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

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

Type of Rule: Legislative Interpretive Procedural

Agency: WV Department of Transportation, Division of Highways

Address: Bldg. 5, Room 164
1900 Kanawha Blvd., E.
Charleston, WV 25305-0430

Phone Number: 304-558-2804 Email: marvin.g.murphy@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.

None

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.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

Rule Title: _____

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

N/A

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: July 30 2010

Signature of Agency Head or Authorized Representative

Paul A. Matthews, Jr.

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 30, 2010

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV Dept. of Transportation, Division of Highways
Bldg. 5, Room 164
1900 Kanawha Blvd., E.
Charleston, WV 25305-0430

LEGISLATIVE RULE TITLE: Purchase and Disposal of Materials, Equipment and Supplies

1. Authorizing statute(s) citation WV Code 17-2A-4-8(35), 14, 15, 23 and 17-24-4

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 29, 2010

b. What other notice, including advertising, did you give of the hearing?
None

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 29, 2010 at 9:00 a.m.

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)

July 30, 2010

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (Please type)

Marvin Murphy; Kathy Holtsclaw

WV Div. of Highways

Bldg. 5, Room 164

1900 Kanawha Blvd., E.

Charleston, WV 25305-0430

304-558-2804

marvin.g.murphy@wv.gov

kathy.j.holtsclaw@wv.gov

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

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.

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached

TITLE 157
PROCEDURAL RULES
DEPARTMENT DIVISION OF HIGHWAYS

FILED

2010 JUL 30 AM 9:06

SERIES 4
PURCHASE AND DISPOSAL OF MATERIALS,
EQUIPMENT, EQUIPMENT REPAIR SERVICES AND SUPPLIES
WEST VIRGINIA
SECRETARY OF STATE

§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 §§17-2A4-8(35), 14, 15, 23 and 17-24-4 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. (See 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 Division 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. Vehicle Equipment and Repair Commercial Work Orders.

3.1. When repair by the Division of Highways utilizing its own personnel, parts and services is determined not to be cost effective or practical under the circumstances, the commissioner of highways may issue a commercial work order to certified vendors for repair of vehicles and equipment when the commissioner determines that the repairs would extend the life of the equipment or vehicle a minimum of five years and that the expenditure would be the safest cost effective alternative to purchase of new vehicles

and equipment or repair by the Division of Highways.

3.2. Any commercial vendor of vehicle and equipment repair may apply to the Division of Highways for certification as a certified repair vendor by using the form included in this Rule as Attachment A - WVDOT,DOH VENDOR CERTIFICATION FORM. Vendors will be bound by the terms and conditions included on the form.

3.2.1. In order to qualify, the vendor must provide proof satisfactory to the Division of Highways that it has the trained personnel, the required tools, equipment and facilities to provide the work.

3.2.2. Division of Highways personnel will inspect or cause to be inspected the facilities and will review the qualifications of personnel of vendors applying for certification. If approved by the Division of Highways, the vendor may be certified as a qualified vendor for the type of repair work the Division of Highways determines the vendor is qualified to provide.

3.3. Prior to issuing a commercial work order with a certified vendor, the Division of Highways will estimate the cost of repair of the vehicle or equipment. If on-site inspection is required, the Division of Highways may issue a work order to provide for the inspection and estimate.

3.4. Preference for issuing vehicle and equipment repair work orders shall be given to in-state licensed qualified vendors: *Provided*, That a vendor which fails to guarantee its work for at least one year, or which fails to guarantee its work for a longer period if the longer period is comparable to that offered by local rebuild or repair shops, or which fails to complete any work order in the time specified within the work

order, or which fails to complete any work order to the specifications of the work order, will be decertified for a period of one year.

3.5. Nothing herein requires the Division of Highways to issue a work order to any particular commercial vendor.

3.6. If after a documented cost effectiveness analysis the Division of Highways determines that special situations and circumstances warrant deviation from standard cost principles in order to obtain the best price for repairs, the Division is not bound to follow those principles.

§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 therefore 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 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. 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) 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. Any bidder who fails to pay for or remove equipment as required by the preceding section shall be placed on a restricted bidders 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.

Attachment A

WVDOT, DOH
VENDOR CERTIFICATION FORM
(must be fully completed – attach additional sheets if necessary)

VENDOR NAME _____

VENDOR ADDRESS _____

VENDOR FEIN NUMBER _____
(Vendor must be registered in order to qualify)

CERTIFICATION CRITERIA

Type of repair for which certification is requested _____

Number of employees _____

Training of employees for Certification _____

Repair Area (Shop) Sq Ft _____

Vendors Equipment (List) _____

Additional Capabilities (List) _____

Vendor's Hourly rate _____

Percentage of parts and materials markup _____

Will Vendor test all Hydraulic and Electrical Repairs? YES NO

Approved Division Director _____

Approved Commissioner _____

SEE REVERSE SIDE

TERMS AND CONDITIONS OF CERTIFICATION

The following terms and conditions will apply to certification of repair service vendors by the Division and to the performance of repair services:

1) Any commercial vendor of vehicle and equipment repair services may apply for certification as a certified repair vendor. In order to qualify, the vendor must provide proof that it has the trained personnel, the required tools, equipment and facilities to provide the work. The applicant must make its repair facilities and training documentation available for inspection by Division personnel at reasonable times upon request. A vendor may be certified only for types of repair services approved by the Division.

2) Prior to issuing a commercial work order with a certified vendor for repair services, the Division may issue a work order to provide for any necessary disassembly and inspection in order to obtain an estimate of repair costs.

3) Preference for issuing vehicle and equipment repair work orders shall be given to in-state licensed qualified vendors: *Provided*, That a vendor which fails to guarantee its work for at least one year, or which fails to guarantee its work for a longer period if the longer period is comparable to that offered by local rebuild or repair shops, or which fails to complete any work order in the time specified within the work order, or which fails to complete any work order to the specifications of the work order, shall be decertified for a period of one year.

Rev. 6/15/10