

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

Form #3

Do Not Mark In This Box

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2012 AUG 30 PM 2:17

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: Department of Administration, Office of Fleet Management TITLE NUMBER: 148

CITE AUTHORITY: 5A-1-2 and 5A-3-48

AMENDMENT TO AN EXISTING RULE: YES NO

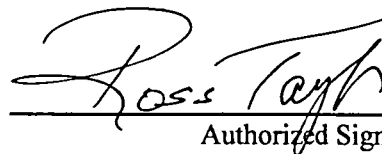
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 3

TITLE OF RULE BEING AMENDED: State Owned Vehicles

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

Agency: Department of Administration

Rule Type: Legislative

Title Number: 148

Cite Authority: 5A-3-48

STATEMENT OF CIRCUMSTANCE AND BRIEF SUMMARY

The rule modifications are being proposed to remove language regarding use of hand-held devices while driving as a result of legislation that passed during the recent legislative session; to add language allowing policies and procedures be established; to add language allowing certain markings on vehicles; to add language for procedures for under utilized vehicles; and to make additional clarifying language and technical cleanup.

BRIEF SUMMARY OF COMMENTS RECEIVED; AGENCY RESPONSE; AND AMENDMENTS

The Department of Administration received several comments regarding the rules. The comments received and the Department of Administration's Office of Fleet Management responses are outlined below:

Department of Environmental Protection Comments:

Comment 1: The minimum criteria of 1500 miles monthly raises concerns. Utilization of vehicles should be assessed on a percentage of days utilized and not on specific mileage. We assign people jobs close to where they live and they may not put the specified mileage on the vehicle.

Agency Response 1: The suggestion makes a valid point. The rules will be modified to monitor vehicle utilization hourly rather than by mileage as suggested by the Department of Transportation below.

Amendment 1: The rules will be modified to reflect vehicle utilization.

Comment 2: The rules establish a record keeping burden on the agency for exempt vehicles as it really makes no difference if the vehicle satisfies the criteria during normal work hours or after hours. Also, proper response to an emergency situation requires immediate availability of transportation, regardless of the number of times it may occur and regardless of such occurrence during normal work hours or not.

Agency Response 2: There will not be an increased record keeping burden on the agency. The only time they would be required to submit a mileage utilization exemption is if the vehicle under utilized. This is already current procedure and does not add any additional requirements.

Amendment 2: No amendment will be made as a result of this comment.

Comment 3: An agency will we required to report an accident on different forms to Fleet Management and BRIM. A single reporting mechanism should be retained. This duplicative reporting in additional record keeping burden on agency and not reflected in the fiscal note.

Agency Response 3: The Fleet Management Office agrees with this comment.

Amendment 3: The rules will be modified so that one form will be done and submitted to BRIM.

Department of Transportation, Division of Highways Comments:

Comment 4: The rules establish a minimum mileage criteria of 18,000 miles annually. The DOT has vehicles that will not meet this standard as a vehicle may transport up to four employees to a job site a few miles away and not be moved until work day is over. Suggest adding language that vehicles with documented hourly usage of less than 1664 hours.

Agency Response 4: This suggestion brings out a valid point. The rules will be modified to track vehicle utilization by hourly usage rather than by miles as suggested.

Amendment 4: The rules will be modified to reflect that vehicle utilization will be done by hourly usage.

Comment 5: The rules require any purchase not made using a fuel card, coupon sheet, vender service card, etc. will be at the expense of the operator. We have encountered times when the vehicle is out of state or in a remote area and the employee had to use a personal card. Also, cards are lost.

Agency Response 5: This is already current practice and not part of the proposed rule modifications.

Amendment 5: No amendment will be made as a result of this comment.

Comment 6: The rules require driver training, spending unit policy revisions, and/or employee discipline. All employees are already required to have annual driver training

through BRIM which creates a redundancy.

Agency Response 6: We agree with the suggestion and will modify the rules to state that driver training shall be done as required by BRIM

Amendment 6: The rules will be amended to require only one training.

Comment 7: Rules require all vehicles upon decommissioning to be delivered to Surplus Property in a condition consistent with normal wear and tear unless otherwise approved by Fleet Management Office. Due to the nature of work and field conditions our vehicles are exposed daily to unfavorable conditions. We could be charged large unknown amount for vehicles turned in falling outside of normal wear and tear. Our vehicles should have a different review criteria.

Agency Response 7: While adverse and unique work conditions exist, we need to maximize the income generated when state vehicles are sold. The purpose of this rule is to have the vehicle in the best condition possible at the time it is turned into Surplus Property. There is already a provision in the policies and procedures that allows damaged vehicles be decommissioned.

Amendment 7: No amendment will be made as a result of this comment.

Lipscomb, Donna M

From: Kessinger, Brent A
Sent: Monday, August 06, 2012 11:01 AM
To: Lipscomb, Donna M
Cc: Brightwell, Steve M; Casto, June A; Calvert, James A
Subject: DEP Comments on Proposed Modifications to Fleet Rules
Attachments: DEP Comments on Proposed Legislative Rule Changes 8-6-12 SIGNED.pdf

Please find attached the comments from the DEP on the proposed modifications to the Legislative rules for state vehicles.

Please contact me if you have questions or would like additional information.

Thank you for the opportunity to provide our input.

Thank you,

Brent A. Kessinger
Fleet/Telecommunications/Maintenance Manager
Administrative Services
Office of Administration
WV Dept. of Environmental Protection
Office Hours: 8:30-5:00, M-F
Phone: 304-926-0499, ext. 1667
Fax: 304-926-0452

"Promoting a healthy environment"




west virginia department of environmental protection

Office of Administration
601 57th Street, S.E.
Charleston, WV 25304
Phone: 304-926-0480

Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
dep.wv.gov

MEMORANDUM

TO: Donna Lipscomb
Executive Coordinator
Department of Administration

FROM: Brent A. Kessinger 
Fleet Manager

DATE: August 6, 2012

RE: *Comments on Proposed Changes to Fleet Rules*

Per your memorandum of July 5, please find below the comments on the proposed changes to the Legislative rules for state vehicles.

Section 6.2 Minimum mileage criteria

The minimum criteria of 1500 miles monthly/18000 miles annually raises some concern overall, however from DEP's perspective it can be addressed thru two of the exemptions provided:

-6.2.2.2. Vehicles assigned to employees whose job duties require continuous availability of specialized equipment such as monitoring or testing apparatus and material necessary to perform mission or function.

-6.2.2.3. Most of DEP's field-based staff is on 24-hour call for emergency response.

DEP's policy is to permanently assign state vehicles only to our employees who are documented to spend at least half of their work time in the field, away from their offices. For our Department, utilization of vehicles should be assessed on a percentage of days utilized and not on specific mileage. We try to manage our work to limit the miles on a vehicle by assigning people jobs closer to where they live. They may use (and need) the vehicle every day available in a month but may not put the specified mileage on the vehicle.

Promoting a healthy environment.

Section 6.2.3

This section establishes a record keeping burden for 6.2.2.2 and 6.2.2.3 exempt vehicles. This is an unnecessary burden on the agency, as it really makes no difference if the vehicle satisfies the 6.2.2.2 criteria during normal work hours or after hours. Also, with regard to 6.2.2.3, proper response to an emergency situation requires immediate availability of transportation, regardless of the number of times it may occur, and regardless of such occurrence during normal work hours or not. This additional record keeping burden placed on the agency is not addressed in the fiscal note.

Section 10.9.2 Accident reporting to BRIM

It appears the agency may now be required to report an incident on different forms (Fleet Management's and BRIM's). A single reporting mechanism should be retained as currently reflected in the rule. Again, this duplicative reporting appears to result in an increased burden on the agency, and is not reflected in the fiscal note.

We appreciate the opportunity to provide comments on these proposed rule modifications. If you have questions or would like to discuss these issues, please feel free to contact me at 304-926-0499, ext. 1667.

BAK

cc: June A. Casto, Chief, Office of Administration, WVDEP
Jim Calvert, Asst. Chief, Office of Administration, WVDEP



WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION
1900 Kanawha Boulevard East • Building Five • Room 109
Charleston, West Virginia 25305-0440 • (304) 558-0444

Earl Ray Tomblin
Governor

Paul A. Mattox, Jr., P. E.
Cabinet Secretary

July 16, 2012

Ms. Donna Lipscomb
Executive Coordinator
West Virginia Department of Administration
1900 Kanawha Boulevard, East
Building 1, Room E-119
Charleston, West Virginia 25305

Dear Ms. Lipscomb:

The West Virginia Department of Transportation (WVDOT) has reviewed the Department of Administration's proposed legislative rules, CSR 148-3, regarding the use of state vehicles and offers the following comments for consideration:

COMMENT: Section 148-3-6.2 establishes minimum mileage criteria of 18,000 miles annually. The WVDOT has numerous vehicles that will not meet this standard. If used for maintenance or construction, a vehicle may transport up to four employees to a job site a few miles away and not be moved until the work day is over. This workday, however, may range from 8-12 hours depending on the type of work being accomplished. The vehicle may not move more than a few miles a day, is not in constant/continuous use, or equipped with "specialized" equipment; however, it is in use full time.

SUGGESTION: Adding "6.2.2.6. Vehicles with documented hourly usage of less than 1664 hours." This would require a vehicle to be in use a minimum of 32 hours per week.

COMMENT: 148-3-10.5 requires that any purchase not made using a fuel card, coupon sheet, vender service card, etc. will be at the expense of the operator. The WVDOT has encountered times when a state vehicle has been used out-of-state or in remote locations where the employee had to use a personal card in order to continue travel. In other instances, the fuel card has been lost and the driver only learns that it is missing when stopping for fuel, etc.

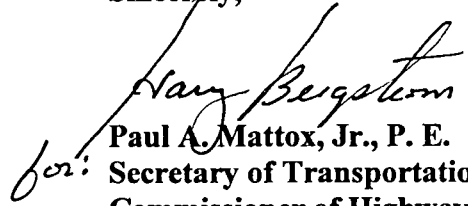
SUGGESTION: Rewording to state that it is "highly recommended/encouraged" to use fuel card, coupon sheet, etc. and to indicate reimbursement of expended personal funds if approved by the spending unit and with sufficient documentation.

COMMENT: 148-3-10.3 indicates that in the event of an accident, the Fleet Management Office may require spending units to require driver training, spending unit policy revisions, and/or employee discipline. All employees who use state vehicles are now required to have annual driver training through BRIM which creates a redundancy on the part of the spending unit.

SUGGESTION: Rewording to require mandatory annual training in accordance with BRIM standards and further indicate that if a "pattern of incidents" is shown, then Fleet Management may require additional training, spending unit policy revisions, and/or recommend employee discipline to the agency.

Your consideration of our comments and suggestions are appreciated.

Sincerely,


for: Paul A. Mattox, Jr., P. E.
Secretary of Transportation/
Commissioner of Highways

PAM:Mb



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Division of Highways

1900 Kanawha Boulevard East • Building Five • Room 110
Charleston, West Virginia 25305-0430 • (304) 558-3505

Earl Ray Tomblin
Governor

Paul A. Mattox, Jr., P. E.
Secretary of Transportation/
Commissioner of Highways

July 31, 2012

Ms. Donna Lipscomb
Executive Coordinator
West Virginia Department of Administration
1900 Kanawha Boulevard, East
Building 1, Room E-119
Charleston, West Virginia 25305

Dear Ms. Lipscomb:

The West Virginia Department of Transportation, Division of Highways (WVDOH) requests that you please consider the following Comment/Suggestion below in addition to the Comments/Suggestions contained in our letter, dated July 16, 2012, regarding the use of state vehicles:

COMMENT: Section 14-10.3 states that the spending unit will pay all vehicle expenses for abuse, misuse and cleaning of the exterior and interior of the vehicle. Upon decommissioning, all vehicles will be delivered to the State Agency for Surplus Property in a condition consistent with normal wear and tear unless otherwise approved by the Fleet Management Office in conjunction with State Surplus Property.

SUGGESTION: Due to the nature of work and field conditions in our highway maintenance and construction areas, our vehicles are exposed daily to unfavorable conditions. In our work environment the normal daily usage over the life of the lease will result in a condition that will be inconsistent with the described guidelines for normal wear and tear. With the stated provision in place the WVDOH could possibly be charged large unknown amounts for vehicles turned in falling outside of the normal wear and tear condition. We recommend that WVDOH vehicles have different review criteria for normal wear and tear.

Your consideration of this Comment/Suggestion, along with our previous Comments/Suggestions is appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Paul A. Mattox, Jr." in dark ink.

Paul A. Mattox, Jr., P. E.
Secretary of Transportation/
Commissioner of Highways

PAM:Mb

**TITLE 148
LEGISLATIVE RULE
DEPARTMENT OF ADMINISTRATION**

**SERIES 3
STATE OWNED VEHICLES**

FILED

2012 AUG 30 PM 2: 17

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§148-3-1. General.

1.1. Scope. – This Rule governs all State owned vehicles and aircraft, including the minimal requirements for all state spending units that have a state vehicle and/or aircraft in their possession.

1.2. Authority. – W.Va. Code §5A-1-2(f) and §5A-3-48.

1.3. Filing Date. – April 8, 2011

1.4. Effective Date. – April 8, 2011

§148-3-2. Definitions.

For purposes of these rules, unless a different meaning clearly appears from the context:

2.1. “Authorized passenger” means a personnel classification such as agent, broker, contractor, persons involved in mission of mercy or medical emergency; other personnel not employed by the State of West Virginia who have a connection with or may have an official business relationship with the State; and recipients of health, public safety, and welfare services performed by the State; and who are formally authorized by the spending unit director.

2.2. “Carpool Vehicle” means the vehicle is generally used each workday to carry at least three employees to and from work in a spending unit-sponsored commuting pool.

2.3. “Commuting” means an employee who has a state vehicle assigned to them, whether permanently assigned or temporarily assigned, and they drive the vehicle to and from their home and office.

2.4. “Control employee” means an elected official or employee whose compensation equals or exceeds the compensation paid to a Federal Government employee holding a position as defined in the Federal Tax Regulations §1.61-21, as amended.

2.5. “Department” means an entity of the State government, as created by W.Va. Code §5F-1-2.

2.6. “Department of Administration” means the entity of State government created by W.Va. Code §5F-1-1 et seq.

2.7. “Fleet Management Office” means the entity within the Department of Administration responsible for the storage, purchase, lease, maintenance and repairs of all State owned vehicles and aircraft.

~~2.8. “Handheld or permanently installed two-way radio communication device” means any electronic device that may be used to send and receive (two-way) voice communications without voice command or manual data inputs regardless of wavelength, amplitude, frequency, phase, pulse width, transmission channel or medium including: general radio service, aviation radio service, marine radio service, general mobile radio service (GMRS), microwave broadcast service, cellular radiotelephone, or voice over internet protocol (VOIP).~~

~~2.9. “Hands-free wireless communication device” means a wireless communication device equipped with an internal feature or function, or an attachment or addition, whether or not permanently part of the device, by which a user engages in a conversation, sends or receives a message, interchanges information, or otherwise communicates without the use of either hand: *Provided*, That this definition does not preclude the use of either hand to activate, deactivate or initiate a function of the device.~~

2.108. “Hazardous material means materials that are radioactive, flammable, explosive, corrosive, oxidizing, asphyxiating, bio hazardous, toxic pathogenic, or allergenic. Also included are physical conditions such as compressed gases and liquids or hot materials, including all materials that may have other characteristics that render them hazardous in specific circumstances.

2.119. “Long-term vehicle lease” means any vehicle lease agreement where the lease period includes twelve monthly lease periods or one annual period regardless of accounting timeframes used, i.e., calendar year or fiscal year.

2.1210. “Non-employee” means an agent, broker, contractor, person involved in missions of mercy or medical emergency, or other persons outside the state government of the State of West Virginia who have a connection with or may have a relationship to State business.

2.1311. “Official business” means business on behalf of the State of West Virginia.

2.1412. “Operator” means a person to whom a state owned vehicle is assigned.

2.1513. “Secretary” means the Secretary of the Department of Administration.

2.1614. “Spending officer” means the executive head of a spending unit, or a person designated by him or her, as defined by W.Va. Code §5A-1-1.

2.1715. "Spending unit" means a department, agency or institution of the State government for which an appropriation is requested, or to which an appropriation is made by the Legislature, as defined by W.Va. Code §5A-1-1.

2.1816. "State owned vehicle" means a vehicle owned by the State of West Virginia.

2.1917. "Use of a wireless communication device" means to verbally or visually converse, message, or otherwise interchange information, including utilization of the internet on a wireless communication device, whether by audio or video communication, telephone, text messaging, or other form of electronic communication.

2.2018. "Vehicle" means any state or agency-owned, leased or acquired vehicle regardless of intended use with a gross vehicle weight rating (GVWR) of 10,000 pounds or less. *Provided*, that this definition does not apply to all terrain vehicles (ATV) or vehicles requiring a commercial driver's license to operate. Spending units may request a written determination of applicability from the Department of Administration Fleet Management Office for other special-use equipment that may be eligible for exclusion based on the scope of this paragraph. Factors ~~effecting~~ affecting applicability determination will include the manufacturer's intended use of the equipment; and any specialty training, certification, or additional licensures required for safe operation.

~~2.21. "Wireless communication device" means a cellular, analog, wireless or digital device, computer or telephone, capable of accessing, sending or receiving wireless electronic messages, conversation or other interchange or information, including, but not limited to, a wireless telephone service, a wireless internet service or a wireless text messaging service.~~

§148-3-3. Questions, Interpretations, and Communications.

3.1. Each spending unit, which has a state owned vehicle in their possession, shall designate a spending unit fleet coordinator for the purpose of facilitating communications between the Fleet Management Office and the state spending unit. The spending unit fleet coordinator designation will be made using the designated form, and will include a mechanism for emergency contact outside normal business hours for use by the Department of Administration Fleet Management Office.

3.2. The Fleet Management Office may prepare and publish policies and procedures necessary to comply with Federal and State code, legislative rules, executive orders, resolutions, and regulations or provide clarifying guidance related to fleet management within the State.

§148-3-4. Titles to State Owned or Long-Term Leased Vehicles.

Vehicles may be titled in the name of the spending unit. The Fleet Management Office will coordinate with spending units to ensure standardized naming convention. For Model Years beginning with 2011, the Fleet Management Office will initiate the titling and registration process, digitize, and safeguard the original title. The original title documents for the Model Years prior to

2011 will be provided to the Fleet Management Office for digitization and safekeeping. Spending units will be provided with web-enabled, secure access to and/or digitized copy copies of the title documents. Original titling documents will be returned to the spending unit within five (5) business days of a determination by the Department of Administration, Board of Risk and Insurance Management that the vehicle is no longer insurable; or the vehicle is scheduled for decommissioning activity by the spending unit.

§148-3-5. Leasing of Vehicles – Generally.

5.1. A vehicle lease may be terminated by the Fleet Management Office for failing to maintain the vehicle; vehicle abuse beyond the intended purpose of the vehicle; or becoming seriously delinquent (more than 90 days).

5.2. At the discretion of the Fleet Management Office, a vehicle lease may be terminated by the Fleet Management Office at any time for any reason or purpose.

5.3. State owned vehicles should be used when the mission of the traveler requires a vehicle to be at his or her disposal for official business transportation.

5.4. All vehicles governed by this rule should meet minimum utilization criteria established by the Fleet Management Office. Justification for each underutilized vehicle will be provided by the assigned Cabinet Secretary using the Fleet Management Office designated form. Utilization criteria will apply to each vehicle individually; consider periods of inactivity; specialized vehicle mission; cost effectiveness; minimum mileage requirements; and the current replacement methodology established by the Fleet Management Office. Minimum utilization criteria will be reviewed by the Fleet Management Office each fiscal year, provided to assigned cabinet secretary, and included in an annual report to the Executive and Legislative branches of State Government.

5.5. Beginning with Model Year 2011 and thereafter, state owned and long-term leased vehicles shall be clearly and permanently marked with either the seal of the State of West Virginia or the seal or insignia of a state agency, board, or commission. The seal shall be produced from reflective material, affixed to the body of the vehicle, and be at least twelve inches in diameter or size from the top left corner to the bottom right corner of the seal or insignia. Each vehicle will be clearly marked with two-inch high lettering above and below the seal. The lettering above the seal shall include the words “State of West Virginia” and shall not be abbreviated. The lettering below or included in the seal or insignia of a state agency, board, or commission shall include the name of the state agency, board, or commission owning or leasing the vehicle and may be abbreviated or continued on multiple lines. Additional distinctive vehicle markings may be added at the discretion of the assigned cabinet-level Secretary. Other distinctive vehicle markings in lieu of seal or insignia and required lettering, e.g., university copyrighted logo, professionally designed agency marking graphic etc, may be used after review and approval by the Fleet Management Office. State vehicles shall be licensed with the display State “Official Business Only” license plates. *Provided*, Those state vehicles used for the purposes in which it is in the best interest of the State for such vehicles not to bear markings and “Official Business Only” license plates, such as vehicles used for law

enforcement or similar purposes, pursuant to West Virginia Code §17A-3-23, shall be exempt from this requirement.

§148-3-6. Use of State Owned and Leased Vehicles.

6.1. State owned and leased vehicles may be used or occupied by State employees, non-employees, and/or authorized passengers as defined herein. No passengers other than state employees, non-employees, and/or authorized passengers are permitted in vehicles without the specific approval of the spending officer. It is the responsibility of the spending unit to monitor vehicle use and to take appropriate action when an employee's use is determined to be inappropriate or is not in accordance with this rule.

6.2. Minimum Mileage Criteria:

6.2.1. To ensure proper utilization and justify retention in the state fleet, state owned or leased vehicles must be utilized a minimum of 1664 hours weekly.

6.2.2. Request for exemption to the minimum hourly usage for assignment or retention of a vehicle shall be submitted to the Fleet Management Office using the designated Fleet Management Office form. Vehicle exemptions shall be classified by vehicle use:

6.2.2.1. Vehicles assigned to public safety officers.

6.2.2.2. Vehicles assigned to employees whose job duties require the constant use or continuous availability of specialized equipment which cannot feasibly or economically be transferred between centralized fleet vehicles or carried in personal vehicles. Such equipment may include medical supplies; monitoring or testing apparatuses or other supplies; equipment or material necessary to perform the spending unit's mission or function.

6.2.2.3. Vehicles assigned to employees, on 24-hour call, who must respond to emergencies on a regular or continuing basis where the emergency response is normally to a location other than the employee's official workstation.

6.2.2.4. Vehicles assigned to employees for essential travel related to the transportation of authorized passengers on a routine basis; or for the essential administrative functions of the spending unit for which the use of a temporary assignment vehicle, daily rental vehicle, long-term lease vehicle, or personally owned vehicle using mileage reimbursement is neither feasible nor economical.

6.2.2.5. Vehicles that are free of lien and in the judgment of the spending officer are both economical and necessary for spending unit mission accomplishment. No more than twenty percent (20%) of the spending unit's vehicles may be exempted using this Exemption Reason Code.

6.2.3. In addition to submitting a request for exemption for under-utilized vehicles, spending units will document the number of occasions annually in which an under-utilized vehicle in categories 6.2.2.2 and 6.2.2.3 was called into service during off-hours/after-hours. Off-hours/after-hours means outside the driver's normal hours of duty.

6.2.4. Fleet Management Office will advise the spending unit as to the approval/disapproval of the request. In cases of disapproval, the spending officer may submit a formal appeal to the Cabinet Secretary of the Department of Administration using the designated Fleet Management Office form.

6.3. Reassignment of Vehicles Due to Underutilization:

6.3.1. In cases where spending units cannot justify continued assignment of a vehicle, Fleet Management Office will recommend to the spending officer an intra/inter spending unit vehicle transfer or decommissioning of the affected vehicle.

6.3.2. Fleet Management Office will advise the spending unit in writing of its recommendation within five (5) days of receipt of the designated Fleet Management Office form.

6.3.3. The spending unit may appeal the Fleet Management Office recommendation to the Cabinet Secretary of the Department of Administration. A failed utilization exemption appeal will result in an intra/inter spending unit vehicle transfer or failing attempts over a 30-day period by spending unit to coordinate an intra/inter spending unit vehicle transfer, instruction will be issued by the Fleet Management office to the spending unit to decommission and retire the affected vehicle. Salvage revenue (minus surplus property fee, if any) for the retired vehicle will be paid to the spending unit that funded the vehicle purchase initially.

6.3.4. In cases where an intra/inter spending unit vehicle transfer is successful, the gaining spending unit will pay to the losing unit a one-time payment equal to the expected salvage value of the vehicle (minus surplus property fee, if any) unless waived or reduced by the losing spending unit. Payment, if appropriate, to the losing spending unit will be concurrent to the transfer date of the vehicle to the gaining spending unit. Upon decommissioning and retirement, any future salvage revenue will be paid to the gaining spending unit.

6.3.5. Upon transfer, the gaining spending unit will become responsible for expenses associated with the vehicle, e.g., fuel, insurance, maintenance, repair, and prevailing monthly Fleet Management Office administrative fee, etc.

6.3.6. An intra/inter spending unit transfer does not constitute authority to increase fleet size. Request to increase fleet size will be made by the gaining spending unit using the designated Fleet Management Office form.

6.3.7. In all cases, the transfer or retirement of an underutilized vehicle will be tracked by the Fleet Management Office and may not be used by the losing spending unit to offset

a future Fleet Management Office authorized purchase without a Fleet Management Office approval to increase fleet size.

§148-3-7. Insurance Coverage.

Insurance is provided for vehicles by the State Board of Risk and Insurance Management.

§148-3-8. Safe Operation Required.

8.1. General Responsibility

The operator of a State owned vehicle is responsible for the vehicle he or she operates. All operators of State owned vehicles are subject to all laws, ordinances, and rules governing the operation of a motor vehicle.

The vehicle operator is personally responsible for responding to any and all citations, violations, or warrants issued or fines levied regarding the operation or parking of the vehicle, to which he or she is assigned (either temporarily or permanently) and is personally liable for any and all fines or penalties – criminal or civil.

8.2. Leaving Unattended Vehicle.

Whenever a vehicle is left unattended, the operator shall, when practical, turn the vehicle off, remove keys from the vehicle, close all windows, lock all doors/hatches/trunks, and remove or conceal from outside view all business and personal items.

8.3. Use of Seat Belts.

The operator and passengers must use safety belts when the vehicle is in operation.

8.4. Driver's License Required.

All operators must have a valid operator's (driver's) license in good standing.

8.5. Use of Wireless Electronic Communication Devices.

The use of a wireless electronic communication device by the operator of a moving vehicle on a public road or highway is prohibited except when the wireless communication device is a hands-free wireless electronic communication device being used hands-free. See §17C-14-15 for additional guidance and exceptions related to the use of two-way radio communications.

~~8.5.a. The provisions of this subsection do not apply to an operator who uses a wireless~~

~~communication device when:~~

~~8.5.a.1. The operator immediately fears for his, her, or another person's life or safety, or the operator believes that he, she, or another person is, or is about to become the victim of a criminal act; or~~

~~8.5.a.2. The operator uses the wireless communication device to contact law-enforcement authorities, emergency personnel for the purpose of reporting criminal activity, a fire, a traffic accident, a serious road hazard, a medical emergency, a hazardous materials emergency or any other condition which threatens bodily injury, public health, welfare or safety.~~

~~8.6. Use of Handheld or Permanently Installed Two-way Radio Communication Devices:~~

~~8.6.a The use of a handheld or permanently installed two-way radio communication device by the operator of a moving vehicle on a public road or highway is permitted under the following circumstances:~~

~~8.6.a.1 Emergency first responders in the execution of health, public safety, and welfare services:~~

~~8.6.a.2. Department of Transportation employees in the execution of their duties to the extent that failure to communicate could result in unsafe transportation conditions or pose a threat to the public.~~

~~8.76. Smoking or use of smokeless tobacco is prohibited in state owned and leased vehicles.~~

~~8.87. Hazardous material transported in a state owned or leased vehicle must be kept in a secured container in accordance with CFR 49, Subpart B, Requirements and applicable state standards or regulations.~~

~~8.87.1 Packages secured in a motor vehicle. Any package containing any hazardous material, not permanently attached to a motor vehicle, must be secured against shifting, including relative motion between packages, within the vehicle on which it is being transported, under conditions normally incident to transportation. Packages having valves or other fittings must be loaded in a manner to minimize the likelihood of damage during transportation.~~

~~8.87.2 Each package containing a hazardous material bearing package orientation markings prescribed in CFR 49 §172.312 must be loaded on a transport vehicle or within a freight container in accordance with such markings and must remain in the correct position indicated by the markings during transportation.~~

~~8.87.3. No smoking while loading or unloading. Smoking on or about any motor vehicle while loading or unloading any Class 1 (explosive), Class 3 (flammable liquid), Class 4~~

(flammable solid), Class 5 (oxidizing), or Division 2.1 (flammable gas) materials is forbidden.

8.87.4 Keep fire away, loading and unloading. Extreme care shall be taken in the loading or unloading of any Class 1 (explosive), Class 3 (flammable liquid), Class 4 (flammable solid), Class 5 (oxidizing), or Division 2.1 (flammable gas) materials into or from any motor vehicle to keep fire away and to prevent persons in the vicinity from smoking, lighting matches, or carrying any flame or lighted cigar, pipe, or cigarette.

8.87.5. Handbrake set while loading and unloading. No hazardous material shall be loaded into or on, or unloaded from, any motor vehicle unless the handbrake is securely set and all other reasonable precautions are taken to prevent motion of the motor vehicle during the loading or unloading process.

8.87.6. Use of tools, loading and unloading. No tools which are likely to damage the effectiveness of the closure of any package or other container, or likely adversely to affect such package or container, shall be used for the loading or unloading of any Class 1 (explosive) material or other dangerous article.

8.98. Confidentially plated vehicles may be excluded, at the discretion of the spending unit, from any automated fleet management program. *Provided:* Information necessary to accurately report the vehicle for asset management purposes, such as vehicle class, model year, drive type, in-service date, and odometer reading as well as vehicle commuting status for fringe benefit reporting purposes will be provided by the fifth working day of each month by the spending unit using the Fleet Management Office designated form.

§148-3-9. Permissible Uses.

9.1. Generally.

State owned and leased vehicles, including temporarily leased vehicles, may be used under only one of the two (2) categories or conditions:

9.1.1. Use by multiple employees; or

9.1.2. Use by primarily one (1) employee.

9.2. Use by Multiple Employees.

When a State owned vehicle is owned or leased for use by multiple employees, the vehicle must be kept on State owned property or property leased by the State when not in use. Exceptions may be granted by the Fleet Management Office for spending unit-sponsored commuting carpool vehicles where State owned or leased property is not available.

9.3. Use by Primarily One Employee.

When a State owned vehicle is owned or leased for State official business use by primarily one employee, the vehicle:

9.3.1. is assigned to an employee that has been required by the spending officer in writing to commute to and/or from work for bona fide noncompensatory business reasons; and

9.3.2. cannot be used for personal purposes except for de minimis personal use as allowed by the Internal Revenue Service (IRS) Publication 15-B, *Employer's Tax Guide to Fringe Benefits*, published under U.S. Code Title 26; and

9.3.3. is assigned to an employee that authorizes a monthly payroll deduction for the commuting value; completes a designated "Statement of Commuting Value", or participates in a web-enabled, secure fringe benefit reporting application provided by the Fleet Management Office at no cost to the employee.

9.4. Determining Commuting Value

9.4.1. Commuting value shall be determined in accordance with the Internal Revenue Service (IRS) Publication 15-B, *Employer's Tax Guide to Fringe Benefits*, published under U.S. Code Title 26.

9.4.2. If an employee has been assigned a vehicle and the vehicle is used to commute to and/or from work during that temporary assignment, the employee must complete and submit to his or her spending unit business office with a copy to the Fleet Management Office a designated "Statement of Commuting Value," or participate in a web-enabled, secure fringe benefit reporting application provided by the Fleet Management office at no cost to the employee and provide the spending unit business office with a copy of the designated spending unit monthly report to substantiate and document vehicle use and remain in compliance in accordance with the IRS Publication 15-B, *Employer's Tax Guide to Fringe Benefits*, published under U.S. Code Title 26.

9.4.3. A "Statement of Commuting Value" designated spending unit report must be completed by the employee for each month in which the employee has been assigned a State owned vehicle or leased vehicle for periods of one day or more and has used the vehicle for commuting. The designated "Statement of Commuting Value" spending unit report must be submitted by the employee to the employee's spending unit business office with a copy to the Fleet Management Office within ten (10) business days from the last day of the reporting month. Failure to submit the designated form may result in the termination of the assignment of a vehicle to the employee; will result in a determination by the spending unit business office that miles driven during the unreported period are personal use miles; as well as any applicable penalties levied by the Department of Treasury, Internal Revenue Service of the Federal Government. ~~The Fleet Management Office will make available to spending units and employees an electronic method to satisfy this requirement.~~

§148-3-10. Long-term Leasing and/or Purchasing Vehicles.

10.1. Any long-term vehicle lease must first be approved by the Fleet Management Office. Any vehicle purchase must first be reviewed by the Fleet Management Office.

Regardless of vehicle acquisition method, spending units ~~should~~ shall not increase their fleet size without prior notification and approval by ~~to~~ the Fleet Management Office. A designated form will be processed by the Fleet Management Office with response provided to spending unit within five (5) business days from receipt of the designated form by the Fleet Management Office.

10.2. Leasing and/or Purchasing Non-Fleet Management Vehicles.

The Fleet Management Office may authorize the long-term lease and/or purchase of vehicles by spending units from entities other than the Fleet Management Office, with the spending unit to operate and maintain the vehicles and to assume the responsibility for all vehicle-related expenses, ~~and to reimburse the Fleet Management Office for administrative costs.~~ Non-Fleet Management vehicles will be included in the State's centralized fleet management program administered by the Fleet Management Office and remain subject to standard administrative fees.

10.3. Leasing and/or Purchasing Fleet Management Office Vehicles.

Upon request by spending units, ~~the~~ Fleet Management Office may purchase for and subsequently lease vehicles to spending units upon the established terms and conditions and at the rates specified by the Fleet Management Office. The Fleet Management Office will specify the rates for lease of vehicles to departments, with such rates approved by the Secretary of the Department of Administration. In addition, the spending unit will pay all vehicle expenses for abuse, misuse and cleaning of the exterior and interior of the vehicle. Upon decommissioning, all vehicles will be delivered to the State Agency for Surplus Property in a condition consistent with normal wear and tear unless otherwise approved by the Fleet Management Office in conjunction with State Surplus Property.

10.4. Requirements for Leasing.

A department spending unit desiring to lease a vehicle from the Fleet Management Office will submit a written request in the form designated by the Fleet Management Office. The determination of whether to approve the request to lease a vehicle from the Fleet Management Office will be subject to:

10.4.1. spending unit requirements and justification;

10.4.2. available inventory or opportunity to transfer vehicles;

10.4.3. available funding to satisfy requirements; and/or

10.4.4. complying with all terms and conditions of lease agreements entered into with

the Fleet Management Office.

10.5. Fleet Management Programs

Fleet Management Programs available for the use with state owned and leased vehicles shall be used for vehicle-related expenses such as fuel purchases, repairs, maintenance, towing charges, etc. Spending units are required to review and document drivers' understanding of Fleet Management Programs no later than the 15th of January each calendar year using the designated form.

Any purchase not made via the fuel card, preventive maintenance coupon sheets (or equivalent), or vendor service card assigned to the vehicle will be considered a personal expense of the vehicle operator and paid or reimbursed at the sole discretion of the Fleet Management Office at the recommendation of the spending officer.

10.6. Statewide Contracts for Automotive Commodities and Services.

All statewide contracts for automotive commodities and services must be used except in instances of operational failure or where the safety of the operator would be compromised.

10.7. Fuel Purchases.

All fuel purchases must be for regular unleaded or diesel unless a higher grade or other type of fuel is required by the manufacturer, requested in writing by the spending officer, and approved by the Fleet Management Office. Any exception to the fuel purchases must be approved in advance by the Fleet Management Office. Fuel purchases made in violation of this section will be the responsibility of the spending unit to which the vehicle is assigned. It will be at the discretion of the spending unit to seek reimbursement from the vehicle operator.

10.8. Responsibilities of Operators and Spending Units.

10.8.1. Routine Maintenance.

Routine checking of the oil level, tire pressure and tire wear, as well as other safety-related equipment, is the responsibility of the operator, or in the case of multiple operator vehicles, the spending unit to which the vehicle is assigned. The cost of repairs or replacement as a result of the vehicle not being maintained on a regular and routine basis will be the responsibility of the spending unit to which the vehicle is assigned. It will be at the discretion of the spending unit to seek reimbursement from the vehicle operator.

All state owned and leased vehicles must have a valid state inspection sticker at all times.

10.8.2. Routine Cleaning.

The routine cleaning of the assigned vehicle, including the interior and exterior of the vehicle, is the responsibility of the assigned operator or spending unit, in the case of multiple operator vehicles, to which the vehicle is assigned. The cost of repairs or extensive cleaning as a result of the vehicle not receiving reasonable care and cleaning will be the responsibility of the spending unit to which the vehicle is assigned. It will be at the discretion of the spending unit to seek reimbursement from the assigned operator.

10.9. Reporting and Review of Accidents, Damage and Violations.

10.9.1 Accidents and damage to vehicles ~~and aircraft~~ must be reported to the ~~Fleet Management Office and the~~ Board of Risk and Insurance Management by the spending unit using their designated form on the day of the accident if practical or the next business day if it is impractical to report the accident. The spending officer must provide to ~~the Fleet Management Office and the~~ Board of Risk and Insurance Management an accident report with sufficient detail to determine the circumstances of the accident. ~~The spending unit shall provide weekly interim updates in writing and a copy of the completed accident report to the Fleet Management Office and the Board of Risk and Insurance Management as soon as available.~~

10.9.2. The spending unit shall determine the root cause of any accident, damage to State owned vehicles, and/or driver violation(s). Once identified, the spending unit will take measures as may be necessary to prevent a similar accident, damage or driver violation(s) from reoccurring in the future. These measures may require such actions as driver training, spending unit policy revision, and/or employee discipline as required by the Board of Risk and Insurance Management. ~~Spending units will report preventive measure taken to the Fleet Management Office using the designated form.~~

10.9.3. In the event of an accident, violation, or periodically to determine operator license status, the Department of Administration Fleet Management Office, ~~Department of Administration Board of Risk and Insurance Management~~, or spending unit may request and review driving record/s. Information affecting employability or insurability will be referred to the spending unit for action as appropriate.

10.10. Fleet Management Office Charges.

10.10.1 The Fleet Management Office shall issue regular invoices to spending units for vehicle leases and services.

10.10.2 A monthly administrative fee shall be assessed for every state owned and/or leased vehicles as determined by the Fleet Management Office and approved by the Cabinet Secretary.

10.10.3. The administrative fee will ensure adequate funding to support personnel salaries, direct and indirect costs, and provide for future fleet-related initiatives which are intended

to improve fleet operations and increase cost savings within state spending units.

10.11. Arrearages.

Any spending unit account that becomes delinquent more than ninety (90) days in paying the Department of Administration or designated vehicle services contractor fees may have ~~the credit card~~ services provided by the Fleet Management Office suspended or may be required to return the leased vehicle to the Fleet Management Office.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: State Owned Vehicles

Type of Rule: X Legislative Interpretive Procedural

Agency: Department of Administration, Real Estate Division

Address: 1900 Kanawha Boulevard, East

Building 1, Room E-119

Charleston, WV 25305

1. Effect of Proposed Rule:

	ANNUAL FISCAL YEAR				
	Increase	Decrease	Current	Next	Thereafter
ESTIMATED TOTAL COST	0	0	0	0	0
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:

There will be no fiscal impact as a result of the passage of this rule. The modifications being proposed are to remove language regarding hand-held devices as a result of legislation that passed during recent legislative session, to add language allowing certain vehicle markings, and to add language for procedures for under utilized vehicles.

3. Objectives of These Rules:

Rule Title: State Owned Vehicles

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

None

C. Economic Impact on Citizens/Public at Large.

None

Date: 8/30/12

Signature of Agency Head or Authorized Representative:

Kass Taylor

QUESTIONNAIRE

DATE: August 29, 2012

TO: Legislative Rule-Making Review Committee

FROM: Donna Lipscomb, Executive Coordinator
Department of Administration
1900 Kanawha Boulevard, East
Room E-119
Charleston, WV 25305
304-558-3392

LEGISLATIVE RULE TITLE: 148, Series 3, State Owned Vehicles

1. Authorizing statute(s) citation 5A-3-48

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

July 5, 2012

b. What other notice, including advertising, did you give of the hearing?

Mailing to all Fleet Coordinators for all State Agencies and related entities

c. Date of Public Hearing(s) or Public Comment Period Ended:

August 6, 2012

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received _____

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 30, 2012

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

Donna Lipscomb, Executive Coordinator

Department of Administration

1900 Kanawha Boulevard, East

State Capitol, Room E-119

Charleston, WV 25305

304-558-3392

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)

Clay Chandler, Director of Fleet Management Office

2101 Washington Street, East

Charleston, WV 25305

304-558-2106

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.

N/A

b. Date of hearing or comment period:

July 5, 2012 through August 6, 2012

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

N/A

d. Attach findings and determinations and reasons:

Attached N/A