

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

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2003 APR -4 A 11:19

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: WV State Auditor's Office TITLE NUMBER: 155

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 5

TITLE OF RULE BEING AMENDED: "State Auditor's Computer and Technology Donation
Program"

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) HB 2592

SECTION 64-2-2(c), PASSED ON March 20, 2003

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: April 4, 2003

Carrie J. Chambers

Authorized Signature



State of West Virginia

Office of the State Auditor
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Charleston, West Virginia 25305

Glen B. Gainer III
State Auditor

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April 4, 2003

Ms. Judy Cooper
Director
Administrative Law Division
Secretary of State's Office
Capitol Complex
Charleston, West Virginia 25305

RE: 155CSR5 – "State Auditor's Computer and Technology Donation Program"

Dear Ms. Cooper:

This letter will serve as my approval to file the above-referenced rule with your office as Notice of Final Filing and Adoption of a Legislative Rule Authorized by the West Virginia Legislature.

If you should have any questions concerning the above, please call Carrie Chambers in my office at 558-2251. Your assistance in this filing is very much appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "Glen B. Gainer III".

Glen B. Gainer III
State Auditor

Attachment

PROMULGATION HISTORY

155CSR5 – “State Auditor’s Computer and Technology Donation Program”

June 11, 2002	Filed as Notice of a Comment Period on a Proposed Rule with Secretary of State’s Office and Education Committee
July 24, 2002	Notice of Agency Approval of a Proposed Rule and Filing with the Secretary of State’s Office Education Committee
March 20, 2003	Governor Signed HB 2592 Authorizing Amendments to 155CSR5
April 4, 2003	Final Filed with Secretary of State’s Office with Effective Date of April 4, 2003

TITLE 155
WEST VIRGINIA STATE AUDITOR

SERIES 5
STATE AUDITOR'S COMPUTER AND TECHNOLOGY
DONATION PROGRAM

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§155-5-1. General.

1.1. Scope. -- This legislative rule establishes the operation of the State Auditor's computer and technology donation program, procedures for implementation, public communication and fair distribution of donated computers and other related technology.

1.2. Authority. -- W. Va. Code §12-4B-2.

1.3. Filing Date. -- April 4, 2003.

1.4. Effective Date. -- April 4, 2003.

§155-5-2. Definitions.

2.1. Agency. -- The Office of the State Auditor.

2.2. Applicant. -- Any educational facility, nonprofit organization, juvenile detention centers, and municipal and county public safety offices or other public, charitable or educational enterprise or organization applying to receive computers and other donated technology under the computer and technology donation program created under W. Va. Code §12-4B-2.

2.3. Application Form. -- A form to be created by the director containing such information or requests for information as are necessary to donate the obsolete equipment, such as: authority to make the request or approval to receive such equipment from the appropriate authority within the applicant; a statement of intended use; the number of people who will be able to access or use the equipment; a waiver of liability for the agency; and such other information as would be useful to the director and others who would determine allocation of the donations.

2.4. Director. -- The day-to-day manager of the computer and technology donation program.

2.5. Eligible Institutions. -- Any eligible institution listed as applicant in subsection 2.2.

2.6. Item of Obsolete Equipment. -- One item shall mean any unit or combination of units of obsolete equipment as designated by the director to be offered for donation in the program. An example of one unit would be a single computer monitor, printer, mouse or other item of obsolete equipment offered for donation under the program. A single unit may also be the combination of a monitor, computer, mouse or other obsolete equipment offered for donation under the program.

2.7. Obsolete Equipment. -- Equipment certified by the agency Information Technology Director as no longer fit for an existing agency use.

2.8. Program. -- The computer and technology donation program created under W. Va. Code §12-4B-2.

§155-5-3. Director's Duties.

3.1. The director shall keep records and accounts that identify the equipment donated, the age of the equipment, the reasons for declaring the equipment obsolete and to which eligible institution the obsolete equipment was donated.

3.2. The director may work with the information technology staff of the agency to determine which equipment is obsolete equipment.

3.3. The director shall be responsible for securing such publicity and notice of the program as he or she deems necessary to assure that eligible institutions are aware of the availability of computers or technology for distribution.

3.4. The director shall maintain for three years either in hard copy or by other media a record of all publications or other forms of notice used by him or her to effect notice to eligible institutions.

3.5. The director, annually, upon a date set by the auditor, but in time for inclusion in the report of the auditor to the legislature, shall report to the auditor upon all his duties and the donations of obsolete equipment made to eligible institutions.

3.6. The director shall implement these rules, amend them, per the requirements of W. Va. Code §29A, as necessary to fulfill the intent of W. Va. Code §12-4B-1 et seq.

§155-5-4. Administration.

4.1. The director shall receive obsolete equipment as so designated by the appropriate officer within the agency, and shall store it or hold it in an appropriate place so as to avoid any damage or degradation of the integrity of the obsolete equipment.

4.2. The director shall keep a record of: all such obsolete equipment received, and what, if anything is not functional on the obsolete equipment. Upon receipt and inspection, the director shall then devise an organizational plan for offering the obsolete equipment for donation. Under this section, as part of his or her organizational plan, the director may hold such obsolete equipment until he or she determines that the equipment should be donated so as to maximize its usefulness. An example of such a hold over would be holding a computer monitor until a computer becomes available and thereafter, at the time required by this rule, offering for donation the two units together as one item.

4.3. The director shall receive such obsolete equipment and may, if the expense for doing so is

minimal, repair such equipment to the extent repair is deemed reasonable by the director. Nothing in this rule, however, may require the director to repair obsolete equipment prior to offering it for donation. He or she must only disclose to applicants any repairs that, to the best of the director's knowledge, need to be undertaken to make the obsolete equipment fully functional.

4.4. Nothing in this rule may be construed to require the director or the agency to maintain the obsolete equipment after it has been donated. Once equipment is donated it is no longer the property or obligation of the agency.

4.5. The director shall initiate whenever he or she deems necessary, the offering of obsolete equipment to eligible institutions.

§155-5-5. Notice.

5.1. The director shall, whenever he or she deems necessary and appropriate, provide notice to eligible institutions of the availability of obsolete equipment. Such notice may be by whatever method the director deems appropriate as long as such method is regularly and customarily utilized.

5.2. The notice sent shall include the number of items offered for donation, the condition of the items, and the name, address, phone, fax and electronic mail address of the director to whom recipients of the notice must send a request for a donation request application package.

5.3. Upon receipt of a request for an application package, the director shall send to the applicant an application package containing such information or requests for information as are necessary to donate the obsolete equipment to the applicant, such as: authority to make the request or approval to receive such equipment from the appropriate authority within the applicant; a statement of intended use; the number of people who will be able to access or use the equipment; a waiver of liability to the agency; and such other information as would be useful to the director and others who would determine allocation of the donations.

5.4. Completion of an application package with all information requested and all forms signed by the appropriate authority is required for an applicant to be given consideration under the program.

5.5. In the event that requests for donation exceed the number of items available, the director may select the applicants to receive donations or may assemble a small committee to help him or her decide among the applicants which eligible institution shall receive the items offered for donation.

§155-5-6. Selection.

6.1. The distribution of obsolete equipment to applicants may be made equitably by whatever written criteria is developed by the director.

§155-5-7. Liability and Miscellaneous.

7.1. Neither the agency nor the auditor and director, either in his or her official or personal

capacities, are liable for the malfunction, repair, failure or harm caused to those receiving, using, handling or operating the donated obsolete equipment.

7.2. If any provision or application of this rule is held invalid, the invalidity does not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are severable.