

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

Form #2

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2010 JUN 25 PM 2:52

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Department of Administration TITLE NUMBER: 148 SA-3-48

RULE TYPE: Legislative CITE AUTHORITY: SA-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: _____

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 July 25, 2010 AT 9:00 a.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Donna Lipscomb, Executive Coordinator

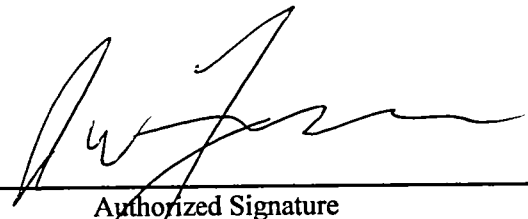
Department of Administration

1900 Kanawha Boulevard, East
Building 1, Room E-119

Charleston, WV 25305

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


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

#460

Agency: Department of Administration
Rule Type: Legislative

Title Number: 148
Cite Authority: 5A-3-48

STATEMENT OF CIRCUMSTANCE AND BRIEF SUMMARY

The Department of Administration proposes to modify the legislative rules relating to State Owned Vehicles in order make them consistent with the Statute. During the 2010 regular legislative session, Senate Bill 219 passed which consolidated all passenger vehicles under one Fleet Management Office within the Department of Administration. The rules remove the exemptions that were previously in code and removes the Fleet Management Office from under the Purchasing Division and into the Department of Administration.

The proposed modifications also adds a definition for "commuting"; clarifies that hand held radios used by employees during the course of their employment are not considered a "hands-free" device; clarifies that a "non-employee" does not prohibit an operator from having a passenger in a vehicle if necessary during the course of their employment or approved by the Spending Officer; allows titles to vehicles be under the name of the spending unit if adequate documentation is provided that proves the title is required to be in the name of the spending unit; requires the operator to notify the Fleet Management Office and the Board of Risk and Insurance Management if the vehicle is involved in an accident or is damaged; clarifies a monthly administrative fee will be assessed on every vehicle; and adds a section relating to state owned vehicles that are owned or leased by the State through Executive Department Constitutional Officers.

**TITLE 148
LEGISLATIVE RULE
DEPARTMENT OF ADMINISTRATION**

**SERIES 3
STATE OWNED VEHICLES**

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2010 JUN 25 PM 2: 52

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§148-3-1. General.

1.1. Scope. – This Procedural Rule governs all State owned vehicles and aircraft and are the minimal requirements for all state spending units who have a state vehicle in their possession. Section §148-3-11 shall be applicable to vehicles owned or leased by the State of West Virginia through an Executive Department Constitutional Officer (“Officer”) for use by the Officer or his or her employees. ~~with the exception of those vehicles owned or leased by Division of Highways of the Department of Transportation, the Division of Public Safety of the Department of Military Affairs and Public Safety, the Division of Natural Resources, the Division of Forestry, the Department of Agriculture, the Higher Education Policy Commission and the Higher Education Governing Boards and their Institutions.~~

1.2. Authority. – W.Va. Code §5A-3-48.

1.3. Filing Date. – ~~March 30, 2010~~

1.4. Effective Date. – ~~May 1, 2010~~

§148-3-2. Definitions.

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

2.1. “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.

~~2.1.~~ 2.2. “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.

~~2.2.~~ 2.3 “Department” means an entity of the State government, as created by W.Va. Code §5F-1-2.

~~2.3.~~ 2.4. “Department of Administration” means the entity of State government created by W.Va. Code §5F-1-1 et seq.

~~2.4.2.5.~~ “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, nor does it apply to hand held radios necessary by an operator during the course of their employment.

~~2.5.2.6.~~ “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. *Provided*, That this definition does not prohibit an operator from having a passenger in a State vehicle if it is necessary during the course of their employment or if approved by the Spending Officer.

~~2.6.2.7.~~ “Official business” means business on behalf of the State of West Virginia.

~~2.7.2.8.~~ “Operator” means a person to whom a state owned vehicle is assigned.

~~2.8.~~ “Purchasing Division” means the entity of State government within the Department of Administration created by W.Va. Code §5A-1-2.

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

2.10. “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.

2.11. “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.

2.12. “State owned vehicle” means a vehicle owned by the State of West Virginia, ~~and licensed to the Travel Management Office of the Purchasing Division of the Department of Administration.~~

2.13. “~~Travel Fleet~~ Management Office” means the entity within the ~~Purchasing Division~~ Department of Administration responsible for the storage, purchase, lease, maintenance and repairs of all State owned vehicles and aircraft, ~~except those exempted by W.Va. Code §5A-3-48.~~

2.14. “Use 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. *Provided*, That this definition does it apply to hand held radios necessary by an operator during the course of their employment.

2.15. "Vehicle" means any state or agency owned passenger-type vehicle including, but is not limited to, sedans, station wagons, minivans not requiring a CDL license, pickup trucks classified as less than one ton, sport utility vehicles, or vans used primarily for the transportation of the driver and no more than 15 passengers.

2.16. "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. Provided, That this definition does it apply to hand held radios necessary by an operator during the course of their employment.

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

Each agency which has a state owned vehicle in their possession, shall designate appoint an agency fleet coordinator for the purpose of facilitating communications between the ~~Travel~~ Fleet Management Office and the ~~leasing agencies~~ state spending units.

§148-3-4. Titles to State Owned Vehicles.

All State owned vehicles, ~~other than those owned or leased by the Division of Highways or the Division of Public Safety~~, must be titled in the name of the State of West Virginia, Department of Administration, ~~Travel~~ Fleet Management Office. Provided, That the title of a vehicle may be in the name of the spending unit if adequate documentation is provided that proves the title is required to be in the name of the spending unit and if approved in writing by the Fleet Management Office.

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

5.1. All leased vehicles utilized by spending units shall be leased from the ~~Travel~~ Fleet Management Office, unless the ~~Travel~~ Fleet Management Office has approved leasing a vehicle from another source.

5.2. At the discretion of the ~~Travel~~ Fleet Management Office, a vehicle lease may be terminated by the ~~Travel~~ 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 must meet the minimum mileage criteria established by the ~~Travel~~ Fleet Management Office. Exceptions to the mileage criteria may be granted by the ~~Travel~~ Fleet Management Office when recommended by the spending officer or his or her designee in writing.

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

6.1. State owned vehicles may be used by State employees and/or non-employees, as defined herein. No passengers other than state employees and/or non-employees are permitted in vehicles without the specific written approval of the spending officer. It is the responsibility of the spending unit to monitor employee 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.

§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 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 State Owned Vehicle.

Whenever a vehicle is left unattended, the operator shall 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 when practical.

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.

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.

§148-3-9. Permissible Uses.

9.1. Generally.

~~Leased~~ 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 a number of employees; or

9.1.2. Use by primarily one (1) employee.

9.2. Use by a Number of Employees.

When a State owned vehicle is owned or leased for use by a number of employees, the vehicle: must be kept on State owned property or property leased by the State when not in use.

9.3. Use by Primarily One Employee.

When a State owned vehicle is owned or leased for State 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 minimus personal use as allowed by the Internal Revenue Service and

9.3.3. is assigned to an employee that authorizes a monthly payroll deduction for the commuting value or completes a "Statement of Commuting Value" as designated by the ~~Travel~~ Fleet

Management Office.

9.4. Determining Commuting Value

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.

~~9.4.1. An assignment to an individual employee when used for commuting will have a monthly payroll deduction based on the Division Personnel's calendar and in accordance with the IRS Publication 15-B, *Employer's Tax Guide to Fringe Benefits*, published under U.S. Code Title 26.~~

9.4.2. Temporarily Assigned Vehicles:

If an employee has been assigned a vehicle on a temporary basis 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 "Statement of Commuting Value," as designated by the ~~Travel~~ Fleet Management Office and in accordance with the IRS Publication 15-B, *Employer's Tax Guide to Fringe Benefits*, published under U.S. Code Title 26, ~~with payment attached to reimburse the State for the "commuting value."~~

A "Statement of Commuting Value" must be completed for each month in which the employee has been assigned a State owned vehicle and has used it for commuting. The "Statement of Commuting Value" must be submitted to the employee's spending unit business office with a copy to the ~~Travel~~ Fleet Management Office within fifteen (15) business days from the last day of the reporting month. Failure to submit the form may result in the termination of the assignment of a vehicle to the employee as well as any applicable penalties by the Department of Treasury, Internal Revenue Service of the Federal Government.

§148-3-10. Leasing and/or Purchasing ~~Non-Travel~~ Fleet Management Vehicles.

10.1. A vehicle purchase must first be approved by the ~~Travel~~ Fleet Management Office.

The vehicle must be titled to the State of West Virginia, Department of Administration, ~~Travel~~ Fleet Management Office unless the title is required to be in the name of the spending unit and if approved in writing by the Fleet Management Office. Agencies must not increase their fleet without prior approval from the ~~Travel~~ Fleet Management Office.

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

The ~~Travel~~ Fleet Management Office may authorize the lease and/or purchase of vehicles by spending units from entities other than the ~~Travel~~ 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 ~~Travel~~ Fleet Management Office for administrative costs.

10.3. Leasing ~~Travel~~ Fleet Management Office Vehicles Generally.

The ~~Travel~~ Fleet Management Office may lease vehicles to spending units upon the established terms and conditions and at the rates specified by the ~~Travel~~ Fleet Management Office. The ~~Travel~~ 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 retirement, 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 ~~Travel~~ Fleet Management Office.

10.4. Requirements for Leasing.

A department desiring to lease a vehicle from the ~~Travel~~ Fleet Management Office will submit a written request in the form designated by the ~~Travel~~ Fleet Management Office. The determination of whether to approve the request to lease a vehicle from the ~~Travel~~ 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 ~~Travel~~ Fleet Management Office.

10.5. ~~Travel~~ Fleet Management Office Credit Card.

A credit card is assigned to all state owned and leased vehicles ~~leased by the Travel Management Office~~ and shall be used for vehicle-related expenses such as fuel purchases, repairs, maintenance, towing charges, etc.

Any purchase not made via the credit 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 ~~Travel~~ 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 Travel Fleet Management Office. Fuel purchases made in violation of this section will be the personal responsibility of the 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.

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.

Accidents and damage must be investigated reported to the Fleet Management Office and the Board of Risk and Insurance Management by the spending unit within two (2) calendar the day of the accident or the following business day if the accident occurs on a non-business day days of the accident. The spending officer must provide to the Travel Fleet Management Office and the Board of Risk and Insurance Management an accident report with sufficient detail to determine the circumstances of the accident.

In the event of an accident, violation, or when it is deemed necessary by the spending unit, the driving records of the operator will be reviewed and appropriate action shall be taken by the spending unit.

10.10. Travel Fleet Management Office Charges.

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

10.11. Arrearages.

Any spending unit account that becomes seriously delinquent in paying the Department of Administration or designated vehicle services contractor fees may have the credit card provided by the Travel Fleet Management Office suspended or may be required to return the leased vehicle to the Travel Fleet Management Office.

§148-3-11. Vehicles Owned or Leased by the State Through Executive Department Constitutional Officers.

11.1. Application of This Section.

This section shall be applicable to vehicles owned or leased by the State of West Virginia through an Executive Department Constitutional Officer (“Officer”) for use by the Officer or his or her employees.

11.2. Definition of Executive Department Constitutional Officer.

The officers to which this section is applicable are as set forth in W.Va. Const. art. VII, Section one.

11.3 Each Officer shall designate within his or her office a fleet supervisor.

11.4. Each fleet supervisor shall maintain a current list of all motor vehicles owned or leased by the State through the Officer for use by said Officer or his or her staff. The list shall be supplied to the Secretary or his or her designee and updated as necessary.

11.5. Each Officer shall have in effect a policy for operators of all motor vehicles owned or leased by the State through the Officer for use by the Officer or his or her employees, a copy of which shall be supplied to the Secretary or his or her designee.

The policy required by the provisions of this subsection shall include:

- a) requirements relating to the safe operation of said vehicles;
- b) requirements relating to reporting of accidents and violations with sanctions for unsafe use;
- c) requirements relating to compliance with IRS publication 15-B, Employer’s Guide to Fringe Benefits published under Titla 26, U.S. Code should the Officer authorize vehicles to be

used for non-work related purposes; and
d) requirements for maintenance of said vehicle.

11.6. The provisions of this section are designed to comply with the provisions of S.B. 219 (2010 Regular Session) as the provisions of that legislation relate to motor vehicles owned or leased by the State of West Virginia through Executive Department Constitutional Officers for use by the Officer or his or her employees.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 148 - CSR - 3 State Owned Vehicles

Type of Rule: X Legislative Interpretive Procedural

Agency: Department of Administration

Address: 1900 Kanawha Boulevard, East
Capitol Building, Room E-119
Charleston, WV 25305

Phone Number: 304-558-3392 Email: donna.m.lipscomb@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.

The exact impact to the State with the promulgation of the proposed rules regarding state owned vehicles are unknown. During the 2010 regular session of the Legislature, Senate Bill 219 passed which consolidated all of the State's passenger vehicles under one Fleet Management Office. These rules are being promulgated in order for the rules to be consistent with the Code. The Statute already sets forth the requirements and the rules simply provide the minimum requirements that all state spending units must abide by when utilizing a state owned vehicle.

Currently an administrative fee is being charged to those agencies that were under the existing fleet program in order to fund the Fleet Management Office. With the consolidation, all vehicles will now pay the administrative fee. This will increase the costs to those agencies that were previously exempt. However, it will reduce the costs of agencies currently paying the fee. The more vehicles that are in the program, the lower the administrative fee that must be assessed.

Although the proposed rule modifications clarify that the administrative fee will be charged, the authority for the fee is in statute and it would be assessed regardless of whether the proposed rules pass the legislature. The amount of the administrative fee can not be determined at this time as it is unknown how much money will be needed to fund the office, as a Fleet Manager has not yet been hired and that person's salary will be a determining factor in the administrative fee.

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	2010 Increase/Decrease (use "-")	2011 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	-0-	-0-	-0-
Personal Services			
Current Expenses			

Repairs & Alterations			
Assets			
Equipment			
Other			
2. Estimated Total Revenues			

Rule Title: 148-CSR-3, State Owned Vehicles

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

The exact fiscal impact as a result of the proposed legislative rules is unknown.

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: _____

Signature of Agency Head or Authorized Representative

