

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

Form #3

Do Not Mark In This Box

FILED

2010 JUL 26 PM 4:12

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 TITLE NUMBER: 148

CITE AUTHORITY: 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 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.

**Agency:** Department of Administration  
**Rule Type:** Legislative

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

## **BRIEF SUMMARY OF COMMENTS RECEIVED; AGENCY RESPONSE; AND AMENDMENTS**

The proposed rules were provided to all state entities who have a state owned vehicle. A summary of the comments received and the Department of Administration's responses are outlined below:

**Comment 1:** Smoking or using smokeless tobacco is not allowed in state owned/leased vehicles.

**Agency Response 1:** The Department of Administration agrees with the comment that smoking or using smokeless tobacco in state owned vehicles and will insert language to that affect in the rules.

**Amendment 1:** Rule will be amended as a result of this comment.

\*\*\*\*\*

**Comment 2:** Hazardous material transported in a state owned/leased vehicle must be kept in a secured container in accordance with all applicable standards and regulations.

**Agency Response 2:** The Department of Administration agrees with the comment and language will be inserted to that effect.

**Amendment 2:** Rule will be amended as a result of this comment

\*\*\*\*\*

**Comment 3:** Remove language requiring a "statement of commuting value" be filed with the agency and the Fleet Management Office.

**Agency Response 3:** The Department of Administration does not agree with this comment and the requirement would assist the Fleet Management Office in determining who is commuting and would also make the employees aware that a statement of commuting value is required.

**Amendment 3:** No amendment will be made as a result of this comment.

\*\*\*\*\*

**Comment 4:** Add language that indicates the lease rates will be determined by the financing packages during the purchasing process as well as overhead administrative costs.

**Agency Response 4:** The Department of Administration does not agree with this comment as many factors determine the lease rate.

**Amendment 4:** No amendment will be made as a result of this comment.

\*\*\*\*\*

**Comment 5:** Add language that the Director of Surplus Property can approve a vehicle being retired in a condition other than normal wear and tear.

**Agency Response 5:** The Fleet Management Office currently works with the Director of Surplus Property on retirement of vehicles and will add language in the rules that approval will be made in conjunction with the Director of Surplus Property.

**Amendment 5:** Rule will be amended as a result of this comment.

\*\*\*\*\*

**Comment 6:** Language that would allow the Fleet Management Office to allow a higher grade or other type of fuel to be used.

**Agency Response 6:** It would not be a good use of taxpayer dollars to purchase premium gas when regular is acceptable. However, there may be extenuating circumstances and the rules will be modified to allow the Fleet Management Office to approve such purchase in advance.

**Amendment 6:** The rules will be amended as a result of this comment.

\*\*\*\*\*

**Comment 7:** State inspection stickers must be valid at all times

**Agency Response 7:** The Department of Administration will include language that inspection stickers must be valid in the rules although it is already state law.

**Amendment 7:** The rule will be amended as a result of this comment.

\*\*\*\*\*

**Comment 8:** Add language to require an accident report be provided within 5 days

**Agency Response 8:** The Department of Administration does not know whether all accident reports will be available to the agency within 5 days. However, we will add language that accident reports shall be provided when available.

**Amendment 8:** The rule will be amended as a result of this comment.

\*\*\*\*\*

**Comment 9:** The definition of "commuting" is not clear and could lead to confusion for people who use a state vehicle.

**Agency Response 9:** The Department of Administration believes the definition of commuting is sufficient. If an operator of a vehicle can not determine whether he is commuting then the operator should contact the Fleet Management Office.

**Amendment 9:** No amendment will be made as a result of this comment.

\*\*\*\*\*

**Comment 10:** Question as to who must report accidents, the spending unit or the operator. Conflict between the statement of circumstance and actual rules.

**Agency Response 10:** The rules require the spending unit to report the accident and they would take precedence as they will become law.

**Amendment 10:** No amendment will be made as a result of this comment.

\*\*\*\*\*

**Comment 11:** It is not possible to report accidents and damage in one day. The spending agency should be allowed a reasonable amount of discretion and time to report.

**Agency Response 11:** The Department of Administration does not agree with this comment. If an operator is involved in an accident or becomes aware of damage the rules requires them to inform the Fleet Management Office of such. The rule does not require all information be given at that time such as the amount of damage, who was at fault, etc.

**Amendment 11:** No amendment will be made as a result of this comment.

\*\*\*\*\*

**Comment 12:** The rule does not spell out what the administrative fee will be for every vehicle. The rule should establish a dollar amount.

**Agency Response 12:** The Department of Administration does not agree with this comment. The administrative fee will be evaluated on an ongoing basis depending on the number of vehicles in the fleet program so assure that the lowest fee possible is charged to agencies. Placing a dollar amount in the rules would require legislative approval and could cost agencies more if we are unable to reduce the fee until the next legislative session.

**Amendment 12:** No amendment will be made as a result of this comment.

\*\*\*\*\*

**Comment 13:** The rules need to reconcile the leased vehicles requirement of 148-3-5 and 10 with the Travel Office requirement.

**Agency Response 13:** The Travel Management Office has it's own regulations as to reimbursement for travel, use of rental cars, etc. These rules do not impact the Travel Management rules as they only apply to state owned vehicles.

**Amendment 13:** No amendment will be made as a result of this comment.

\*\*\*\*\*

**Comment 14:** Minimum mileage criteria is not explained in the rule.

**Agency Response 14:** The Department of Administration requires an agency to drive a certain number of miles for business use in order to get a state owned vehicle. A clarification of "minimum milage criteria" will be added to the rules.

**Amendment 14:** The rule will be amended as a result of this comment.

\*\*\*\*\*

**Comment 15:** The proposed rules do not apply to the Judicial Branch of Government.

**Agency Response 15:** The Department of Administration does not have the ability to exempt the Judicial Branch through these rules. The exemption must be done in statute before we could have the ability to exempt in the rules. The statute does not exempt anyone and the scope portion of the rules state the rules govern all state

owned vehicles and aircraft and are the minimal requirements for all state spending units who have a state vehicle in their possession.

**Amendment 15:** No amendment being made as a result of this comment.

\*\*\*\*\*

**Comment 16:** How will agencies budget for vehicles we are allowed to purchase?

**Agency Response 16:** The budget issues will be handled through the state budget process.

**Amendment 16:** No amendment is being made as a result of this comment.

\*\*\*\*\*

**Comment 17:** What type of fee will be attached and what do the fees pay for?

**Agency Response 17:** Administrative fees will be charged for each vehicle and those fees will be used to fund the Fleet Management Office.

**Amendment 17:** No amendment is being made as a result of this comment.

\*\*\*\*\*

**Comment 18:** For agencies that purchase vehicles, what responsibility for creating purchase orders to buy vehicles will the leasing office have versus the agency.

**Agency Response 18:** The spending unit who is purchasing the vehicle would prepare the purchase order.

**Amendment 18:** No amendment being made as a result of this comment.

\*\*\*\*\*

**Comment 19:** Unable to determine whether the rules would put our agency in non-compliance with federal regulations under the Sportfish and Wildlife Restoration Act without clarification to the following sections: 148-3-5, 10.10 and 148-3-11.

**Agency Response 19:** The Department of Administration is unable to respond to this comment as we are not familiar with the Sportfish and Wildlife Restoration Act and do not know what in particular clarification is being requested.

**Amendment 19:** No amendment is being made as a result of this comment.

\*\*\*\*\*

**Comment 20:** Would the Special Natural Resources Police within the Wildlife Resources Section, would they fall within the same guidelines as the Law Enforcement Section?

**Agency Response 20:** The Department of Administration is unfamiliar with such guidelines and cannot respond to this comment. An administrative decision would need to be made between the spending unit and the Fleet Management Office. This is not addressed in the rules.

**Amendment 20:** No amendment being made as a result of this comment.

\*\*\*\*\*

**Comment 21:** When selling a vehicle through surplus property, will an agency continue to receive payment from the sale of vehicles purchased with federal aid and/or license money?

**Agency Response 21:** Surplus Property rules would apply. Surplus Property reimburses the account that initially purchased the vehicle.

**Amendment 21:** No amendment is being made as a result of this comment.

\*\*\*\*\*

**Comment 22:** The Division of Natural Resources must maintain control over vehicles purchased with license and/or federal revenue, and any rules governing the use of vehicles must be consistent among all state agencies on all procedures.

**Agency Response 22:** The Department of Administration can not respond other than to state that these rules would apply consistently to all agencies.

**Amendment 22:** No amendment is being made as a result of this comment.

\*\*\*\*\*

**Comment 23:** To assure an agency is in compliance with federal regulations, additional clarification is requested.

**Agency Response 23:** The Department of Administration is unaware what specific clarification is being requested.

**Amendment 23:** No amendment is being made as a result of this comment.

\*\*\*\*\*

**Comment 24:** There is a typo on page 2 of the document, 2.14 at the bottom of the page. It should include the word "Not" in that sentence.

**Agency Response 24:** The Department of Administration agrees and the typo has been fixed.

**Amendment 24:** The rule was amended as a result of this comment.

\*\*\*\*\*

**Comment 25:** DOH purchases vehicles from the constitutionally-protected State Road Fund. Would they be excluded from the transfer and leasing requirements and instead have specific reporting requirements that would satisfy legislative intent.

**Agency Response 25:** The DOH would not be exempt according to the law.

**Amendment 25:** No amendment is being made as a result of this comment.

\*\*\*\*\*

**Comment 26:** Due to the constitutional protection afforded the State Road Fund, it should not be used to purchase any vehicles which are not titled to the DOH.

**Agency Response 26:** The source of funding is irrelevant in the purchase of vehicles.

**Amendment 26:** No amendment is being made as a result of this comment.

\*\*\*\*\*

**Comment 27:** The rule requires that agencies pay a monthly administrative fee. What administrative responsibilities will Department of Administration have that will justify the assessment of a fee if an agency retains title to its vehicle. The rule does not describe the types of costs that will be used to calculate the fee.

**Agency Response 27:** The administrative fee will be used to fund the Fleet

**Management Office.** The Department of Administration will have many administrative responsibilities that will justify the fee, including but not limited to, negotiating statewide contracts for vehicle purchases and fuel; maintaining a reporting system for vehicles; overseeing appropriate use by vehicle operators; monitoring vehicle accidents and damage; monitoring maintenance and repair expenses; and overseeing proper approval and IRS declaration for drivers that commute. The amount of the fee will be ever changing based upon the staffing levels and the number of vehicles in the fleet program.

**Amendment 27:** No amendment is being made as a result of this comment.

**Lipscomb, Donna M**

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**From:** Calvert, James A  
**Sent:** Wednesday, July 21, 2010 3:28 PM  
**To:** Lipscomb, Donna M  
**Subject:** RE: fleet rules  
**Attachments:** Title 148.docx

Attached you will find DEP's comments to the Title 148 that you sent out on June 29, 2010. If you have any questions, please feel free to contact me. Thanks.

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**From:** Lipscomb, Donna M  
**Sent:** Tuesday, June 29, 2010 10:45 AM  
**To:** Alice Taylor; Ashley Summitt; Bergstrom, Harry L; Blair Taylor; Brown, Denise K; Calvert, James A; Casto, June A; Chapman, Keith E; Cogar, Tammy L; Cole, Steven B; Danae DeMasi; Diana Stout; Gloria Rowan; Greg Nicholson; Hartman, Janice L; Jerome Clay; Junkins, John; Lawson, Kathy M; McClure, Tom L; Meester, Steven X; Montgomery, George L; Palmer, Ryan B; Paulson, Robert P; Phillips, Greg W; Price, Harry F; Sandra Gillispie; Sigmon, Marti D; Smith, Carl D; Smith, Les M; Steve Chapman; Tincher, David R; Wass, Terry L; Wimer, Barbara S  
**Subject:** fleet rules

The proposed legislative rules and emergency rules for State Owned Vehicles were filed with the Secretary of State on Friday for a comment period. I have attached them for your review. If you want to make comments, you must get them to me in writing by letter or e-mail prior to July 25<sup>th</sup> at 9:00 a.m. Give me a call at 558-3392 if you have any questions. Thanks

Title 148  
Legislative Rule  
Department of Administration

Series 3  
State Owned Vehicles

**148-3-8 Safe Operation Required**

8.6 Smoking or using smokeless tobacco is not allowed in state owned/leased vehicles.

8.7 Hazardous material transported in a state owned/leased vehicle must be kept in a secured container in accordance with all applicable standards and regulations.

**148-3-9 Permissible Uses**

9.4.2 Temporary 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 comply with IRS Publication 15-B.**

Remove the second paragraph entirely  
**(DEP's thought here is does Fleet Management want to deal with all the headaches that would be involved....it is DEP's thought to put this on the agency. DEP has added commuting field to our daily time and activity reporting that makes the employees acknowledge potential commuting each work day and requires supervisor's approval.**

**148-3-10 Leasing and/or Purchasing Vehicles**

10.3 Leasing Fleet Management Office Vehicles Generally,

**The Fleet Management Office may lease vehicles to spending units upon the established terms and conditions and at the rates specified by the Fleet Management Office. The financing packages arrived at during the purchasing process as well as overhead administrative costs determine the amount of the lease rates for each class of vehicle. In addition, the spending units 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 Fleet Management Office or the Director of Surplus Property.**

**10.7 All fuel purchases must be for 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 vehicle operator.**

10.8.1 Routine Maintenance

**Add to paragraph....**State inspection stickers must be valid at all times.

#### **10.9 Reporting and Review of Accidents, Damage and Violations**

**Accidents and damage must be reported to the Fleet Management Office and the Board of Risk and Insurance Management by the spending unit the day of the accident or the following business day if the accident occurs on a non-business day via email or verbally with an accident report to follow within 5 business days.**



Office of the President

July 19, 2010

Ms. Donna Lipscomb  
Department of Administration  
1900 Kanawha Boulevard, East, Room E19  
Charleston, WV 25305

Dear Ms. Lipscomb

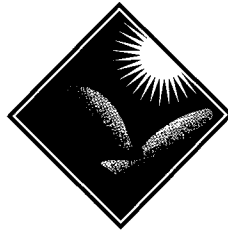
In response to Senate Bill 219 and the Emergency Rule which changed Series 3 State Owned Vehicles, I am submitting the name and title of the fleet coordinator for Bridgemont Community and Technical College. For Bridgemont, this person will be the Assistant Director of Facilities, George Bossie. Should you have any questions, please do not hesitate to contact me.

Sincerely

A handwritten signature in cursive script that reads "Beverly Jo Harris".

Beverly Jo Harris  
President

c: George Bossie  
Rich Donovan



KANAWHA VALLEY  
COMMUNITY & TECHNICAL COLLEGE

July 19, 2010

Ms. Donna Lipscomb  
Department of Administration  
1900 Kanawha Boulevard, East, Room E19  
Charleston, WV 25305

Dear Ms. Lipscomb:

In response to Senate Bill 219 and the Emergency Rule which changed Series 3 State Owned Vehicles, I am submitting the name and title of the fleet coordinator for Kanawha Valley Community and Technical College. For Kanawha Valley, this person will be the Business Manager, Kristi Williams. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Joseph L. Badgley,  
President

**Tax Department Fleet Coordinator's Comments on Proposed Department of  
Administration Legislative Rules Regarding State Owned Vehicles**

- 1.1 Scope – Rule no longer exempts certain departments who own their own vehicles. The rules were previously changed and effective on May 1, 2010. The current rules allowed for certain departments an exemption from this rule. The original intent as I understand it is to put all of the State owned vehicles under one management office. I believe they have accomplished this in the new proposed legislative rules.
- 2.1 Definition of “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. I believe the language regarding the definition of this is not clear and, if left as is, it could lead to confusion for the people who use a state vehicle.
- 10.9 Reporting & Review of Accidents, Damage & Violations – In the statement of Circumstance & Brief Summary it states that the operator of the vehicle is required to notify the Fleet Management Office & the Board of Risk & Insurance Management if the vehicle is involved in an accident or is damaged. In the section of the rules it says to be reported by the spending unit the day the accident or damage occurs. Who actually needs to report the accident - the driver of the assigned vehicle or the spending unit?

The rule also requires that an accident or damage be reported to Fleet & BRIM the same day of the accident or the following business day if the accident occurs on a non-business day. I have dealt with several of these types of circumstances and sometimes it is just not possible to report this the same day it happens. If a vehicle is vandalized and the damage is under \$1,000.00 then the spending unit will be responsible for the cost of the repairs so to me it is not critical that this be reported on the same day. I feel the spending agency should be allowed a reasonable amount of discretion and time to report this depending on the circumstances.

- 10.10 – This section does not spell out what the administration fee will be for every vehicle. We pay a lease rate for a vehicle then once we pay the lease off we still pay \$92.00 a month as long as we have the vehicle in our possession. Is the fee in addition to what we already pay, either through a lease payment or the monthly fee imposed after the lease is paid off? The rule should establish a dollar amount for the fee and also determine the terms, conditions, and restrictions under which the fee is imposed.
- The rule needs to reconcile the leased vehicles requirement of 148-3-5 and 10 with the Travel Office requirement to use Enterprise rental cars for routine travel.

Section 5.4 discusses minimum mileage criteria, and perhaps operation of the minimum mileage criteria concept would resolve the confusion. However, the term “minimum mileage criteria” and the applicability of the minimum mileage criteria are not explained in the rule.

**SUPREME COURT OF APPEALS**  
**STATE OF WEST VIRGINIA**

STEVEN D. CANTERBURY  
ADMINISTRATIVE DIRECTOR



ADMINISTRATIVE OFFICE  
BUILDING 1, ROOM E-100  
1900 KANAWHA BOULEVARD, E.  
CHARLESTON, WV 25305-0832  
(VOICE) 304/558-0145  
(TTY) 304/558-4219  
(FAX) 304/558-1212  
[www.state.wv.us/wvsca/](http://www.state.wv.us/wvsca/)

July 1, 2010

Ms. Donna Lipscomb  
Executive Coordinator  
WV Department of Administration  
Building 1, Room E-119  
Charleston, WV 25305-0120

RE: Implementation of SB219 and its potential impact on the Judiciary.

Dear Ms. Lipscomb:

Thank you for providing our office with a copy of the proposed rules relating to state-owned vehicles. After reviewing the proposed rules, our office has determined that they are not applicable to the Judicial Branch of West Virginia state government.

The proposed rules clearly state in Section 1.1. Scope. – “This procedural rule...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.”

In addition, §148-3-11, of the rules states that “the officers to which this section is applicable are as set forth in W. Va. Const. Art. VII, Section one.” Article VII, Section one, states that “the executive department shall consist of a governor, secretary of state, auditor, treasurer, commissioner of agriculture, and attorney general.”

Since these rules do not apply to the Judicial Branch of state government, we are satisfied they do not violate the Division of Powers provision found in Article V, Section one of the West Virginia Constitution.

Thank you for giving us an opportunity to review, and comment upon, these proposed rules. If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Tina A. Sevy".

Tina A. Sevy  
Director of Legislative Analysis

cc: The Honorable Robin Jean Davis, Chief Justice  
Steven D. Canterbury, Administrative Director of the Courts of W.Va.  
Arthur Angus, Director of Court Security and Fleet Manager

## Lipscomb, Donna M

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**From:** Price, Harry F  
**Sent:** Wednesday, June 30, 2010 11:16 AM  
**To:** Lipscomb, Donna M  
**Subject:** FW: fleet rules  
**Attachments:** 20100628141208.pdf

How will agencies budget for vehicles we are allowed to purchase? What type of fee(s) will be attached? What do the fees pay for? For agencies that purchase vehicles, what responsibility for creating purchase orders to buy vehicles will the leasing office have versus the agency once this rule goes into effect?

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**From:** Caplinger, Ken K  
**Sent:** Wednesday, June 30, 2010 10:58 AM  
**To:** Reed, Brad R; Jennelle, Clisby M; Leslie, Brad S; Summers, Sissie A; Beanblossom, Robert L  
**Cc:** Casto, Vicky L - DNR; Price, Harry F  
**Subject:** FW: fleet rules

Please send comments to Vicky and she will consolidate. Looks like they picked up most of our earlier suggestions. I also infer from this that we will indeed be buying our own vehicles BUT at least for Parks they are probably going to be titled to Administration. (Wildlife will have to have an exception to that) However, that is just an inference. It is not clearly spelled out. Harry, do you know if we will have to budget for and buy vehicles and then pay Fleet Management also for annual use, OR will they be buying vehicles for agencies like parks and then recouping their costs through annual per vehicle fees?? Or, will we not be paying Fleet Management at all, but rather they will simply impose these rules and guidelines ?

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**From:** Looney, Lystiann A  
**Sent:** Tuesday, June 29, 2010 8:19 AM  
**To:** Price, Harry F; Murphy, David E; Caplinger, Ken K; Scarberry, Joe T; Taylor, Curtis I  
**Cc:** Jezioro, Frank J; Fleming, Emily J  
**Subject:** FW: fleet rules

Please see attachment: Proposed Legislative Rules - State Owned Vehicles, please provide comments to Harry for compilation.

Thank you,

Lysti

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**From:** Knight, Joan E  
**Sent:** Tuesday, June 29, 2010 7:56 AM  
**To:** Commerce Div. Directors; Commerce WVDO Div. Directors; Smith, Carl D  
**Cc:** Commerce Div. Secretaries; Commerce WVDO Div. Secretaries  
**Subject:** FW: fleet rules

The attachment is for your review and comment. Please note the comment period ends July 25. Thank you.

**Lipscomb, Donna M**

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**From:** Price, Harry F  
**Sent:** Thursday, July 15, 2010 10:41 AM  
**To:** Lipscomb, Donna M  
**Cc:** Fleming, Emily J  
**Subject:** FW: Draft Letter - Fleet Proposal  
**Attachments:** July 14, 2010 - Proposal Fleet.doc

Donna, please provide clarification as requested by Chief Curtis Taylor

---

**From:** Taylor, Curtis I  
**Sent:** Wednesday, July 14, 2010 2:30 PM  
**To:** Price, Harry F  
**Subject:** FW: Draft Letter - Fleet Proposal

Harry: As requested. Our contact with USFWS on this issue has been out of the office.

---

**From:** Warner, Scott A  
**Sent:** Wednesday, July 14, 2010 2:19 PM  
**To:** Taylor, Curtis I  
**Subject:** Draft Letter - Fleet Proposal

July 14, 2010

MEMORANDUM

To: Harry Price  
Executive Secretary

From: Curtis I. Taylor  
Chief

Subject: Legislative Rule – State Owned Vehicles

In response to the proposed Legislative Rule Titled *State Owned Vehicles*, the language provided in the attached Notice of Emergency Rule is unclear; therefore, I am unable to make a determination at this time as to whether it would put our agency in non-compliance with Federal Regulations under 50CFR80 of the Sportfish and Wildlife Restoration Act without clarification to the following sections:

148-3-5       Titles of State Owed Vehicles  
10.10         Fleet Management Office Charges  
148-3-11      Vehicles Owned and leased by the State through Executive Department  
                  Constitutional Officers.

In addition, I would like to request further clarification on:

*Special Natural Resources Police within the Wildlife Resources Section* - would they fall within the same guidelines as our Law Enforcement Section?

*Selling of vehicles through surplus* – will our agency continue to receive payment from the sale of vehicles purchased with federal aid and/or license money?

It is our understanding through conversations with the U.S. Fish and Wildlife Service that the Division of Natural Resources must maintain control over vehicles purchased with license and/or federal revenue, and any rules governing the use of vehicles must be consistent among all state agencies on all procedures (including administrative fees).

To assure that our agency is in compliance with federal regulations, assuring our agency receives the more than \$7.5 million annually, I am requesting that additional clarification be provided before making any final determination.

## Lipscomb, Donna M

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**From:** Meester, Steven X  
**Sent:** Wednesday, June 30, 2010 8:32 AM  
**To:** Lipscomb, Donna M  
**Subject:** RE: fleet rules

Donna,

There appears to be a typo on page 2 of the document. Section 2.14 at the bottom of the page. It does not read correctly, I'm certain from our discussions and from what 2.5 says that the intended wording is "Provided, that this definition does NOT apply to hand held radios..." Currently it reads "this definition does IT reply" rather than "does NOT apply".

Thank you,  
Steve Meester, Assistant Director  
WV Division of Forestry  
Phone: (304) 558-2788  
[Steve.Meester@wv.gov](mailto:Steve.Meester@wv.gov)

---

**From:** Lipscomb, Donna M  
**Sent:** Tuesday, June 29, 2010 10:45 AM  
**To:** Alice Taylor; Ashley Summitt; Bergstrom, Harry L; Blair Taylor; Brown, Denise K; Calvert, James A; Casto, June A; Chapman, Keith E; Cogar, Tammy L; Cole, Steven B; Danae DeMasi; Diana Stout; Gloria Rowan; Greg Nicholson; Hartman, Janice L; Jerome Clay; Junkins, John; Lawson, Kathy M; McClure, Tom L; Meester, Steven X; Montgomery, George L; Palmer, Ryan B; Paulson, Robert P; Phillips, Greg W; Price, Harry F; Sandra Gillispie; Sigmon, Marti D; Smith, Carl D; Smith, Les M; Steve Chapman; Tincher, David R; Wass, Terry L; Wimer, Barbara S  
**Subject:** fleet rules

The proposed legislative rules and emergency rules for State Owned Vehicles were filed with the Secretary of State on Friday for a comment period. I have attached them for your review. If you want to make comments, you must get them to me in writing by letter or e-mail prior to July 25<sup>th</sup> at 9:00 a.m. Give me a call at 558-3392 if you have any questions.  
Thanks

**Lipscomb, Donna M**

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**From:** Hughes, Sasha D  
**Sent:** Friday, July 23, 2010 1:14 PM  
**To:** Lipscomb, Donna M  
**Cc:** Cole, Steven B; Taylor, Alice C; Chapman, Keith E  
**Subject:** DOH COMMENTS - PROPOSED LEGISLATIVE RULE - FLEET MANAGEMENT  
**Attachments:** 20100723130652132.pdf

**Importance:** High

Ms. Lipscomb,

Please find attached, for your further handling, the Division of Highways' comments pertaining to the subject legislative rule. The original letter will be sent to you via interdepartmental mail.

Thank you,

Sasha Hughes  
Administrative Secretary to the  
Deputy State Highway Engineers  
(304) 558-9212  
[Sasha.D.Hughes@wv.gov](mailto:Sasha.D.Hughes@wv.gov)



**WEST VIRGINIA DEPARTMENT OF TRANSPORTATION**

**Division of Highways**

**1900 Kanawha Boulevard East • Building Five • Room 110  
Charleston, West Virginia 25305-0430 • (304) 568-3505**

**Joe Manchin III  
Governor**

**July 22, 2010**

**Ms. Donna Lipscomb  
Executive Coordinator  
Department of Administration  
Building 1, Room E119  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305**

**Dear Ms. Lipscomb:**

**Proposed Legislative Rule  
State Owned Vehicles**

**Per your request, the Division of Highways (DOH) has reviewed the proposed Legislative Rule (Rule) pertaining to state owned vehicles and Senate Bill 219 and offer the following comments:**

- 1. All DOH transportation equipment, including that defined in the subject legislative rule, is purchased from the constitutionally-protected State Road Fund (SRF). During the meeting held on April 21, 2010, the transfer of vehicles purchased from the SRF as well as those purchased from other dedicated special revenues was discussed at length. It was anticipated that the agencies that purchase their vehicles with these funds and the Executive Department Constitutional Officers (CO) would be excluded from the transfer and leasing requirements and instead would have specific reporting requirements that would satisfy legislative intent. In the current revised Legislative Rule, only the CO have specifically been excluded from the transfer and leasing requirements. The DOH continues to recommend that it and any other agency that purchases its vehicles from constitutionally-protected or other special revenues be allowed to retain those vehicles and follow reporting requirements similar to those included in Section §148-3-11. If the DOH is required to transfer its vehicles to the Department of Administration (DOA), then it should be reimbursed for their cost.**
- 2. Section §148-3-10 states that all vehicles will be titled to the "State of West Virginia, Department of Administration." How will the vehicles be purchased initially? Due to the constitutional protection afforded the SRF, it should not be used to purchase any vehicles which are not titled to the DOH. The statement, "...unless the title is required to be in the name of the spending unit and if approved in writing by the**

**Ms. Donna Lipscomb  
July 22, 2010  
Page Two**

**Fleet Management Office," is vague and does not ensure that the DOH will be able to purchase and retain title to its vehicles. What constitutes "required"?**

- 3. The Rule requires that agencies pay a monthly administrative fee. What administrative responsibilities will DOA have that will justify the assessment of a fee if an agency retains title to its vehicles? The Rule also does not describe the types of costs that will be used to calculate the fee.**
- 4. The Rule states that all vehicles are to be sold by Surplus Properties. How will the revenues from these sales be distributed? Revenues from any vehicles purchased from the SRF must be returned to the fund.**
- 5. Section §148-3-1, Subsections 2.14 and 2.16, need to be revised to state "Provided, that this definition does NOT apply to hand held radios utilized by an operator during the course of his/her employment."**

**Thank you for giving the DOH the opportunity to comment on this Rule. Should you have any questions or require additional information, please contact Mr. Steven B. Cole, P. E., our Deputy State Highway Engineer – Operations, at (304) 558-6264 or Ms. Alice Taylor, Director of our Transportation Budget Division, at (304) 558-9240.**

**Sincerely,**



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

**PAM:Ch**

TITLE 148  
LEGISLATIVE RULE  
DEPARTMENT OF ADMINISTRATION

SERIES 3  
STATE OWNED VEHICLES

FILED

2010 JUL 26 PM 4:12

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 not 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. In order for an agency to own or lease a vehicle, they must drive a certain amount of business hours. 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.

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

8.7. Hazardous material transported in a state owned or leased vehicle must be kept in a secured container in accordance with all applicable standards and regulations.

#### **§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 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 in conjunction with State Surplus Property.

#### 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. 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 personal responsibility of 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.

10.8.1.a      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.

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. The spending unit shall provide a copy of the accident report to the Fleet Management Office and the Board of Risk and Insurance Management as soon as available.

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 Title 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.

<b>FISCAL YEAR</b>			
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.

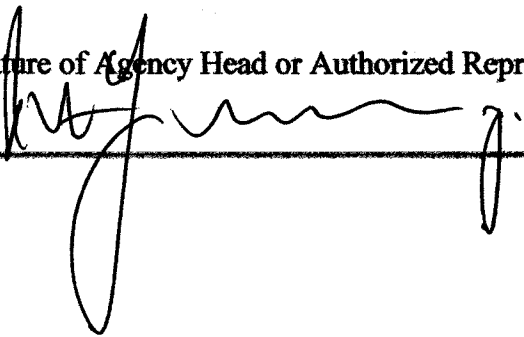
The exact fiscal impact as a result of the proposed legislative rules is unknown.

**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



# QUESTIONNAIRE

**DATE:** July 26, 2010

**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:

June 25, 2010

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:

July 25, 2010

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)

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)

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)

Representatives of agencies who have state owned vehicles

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:

June 25, 2010 through July 25, 2010

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



JOE MANCHIN III  
GOVERNOR

STATE OF WEST VIRGINIA  
DEPARTMENT OF ADMINISTRATION  
OFFICE OF THE CABINET SECRETARY

ROBERT W. FERGUSON, JR.  
CABINET SECRETARY

July 30, 2010

**Via Hand-Delivery**

The Honorable Natalie Tennant  
Secretary of State  
Building 1, Suite 157K  
1900 Kanawha Boulevard, East  
Charleston, WV 25305

**Re: Legislative Rules**

Dear Secretary Tennant,

I am enclosing an original and fifteen copies of the documents listed below for filing. The proposed rules are in regard to state owned vehicles. I will provide the copies of the enclosed documents to the Legislative Rule Making Review Committee once they are marked filed by your office. Additionally, an electronic version will be sent to your office via e-mail.

The documents enclosed consist of the following:

1. Notice of Agency Approval of a Proposed Rule and Filing with the Legislative Rule-Making Review Committee,
2. Statement of Circumstance and Brief Summary of the rules,
3. Brief Summary of comments received, agency response, and amendments,
4. Proposed Rules,
5. Fiscal Note
6. Questionnaire.

Thank you very much for your assistance. If you have any questions, or need any additional information, please do not hesitate to give me a call.

Sincerely,

Donna M. Lipscomb  
Executive Coordinator

Enclosures