

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

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Form #6

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

AGENCY: Department of Administration TITLE NUMBER: 148

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 RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 112

SECTION 64-2-1, PASSED ON March 12, 2011

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: April 8, 2011


Authorized Signature

**TITLE 148
LEGISLATIVE RULE
DEPARTMENT OF ADMINISTRATION**

**SERIES 3
STATE OWNED VEHICLES**

FILED
2011 APR -8 AM 11:30
OFFICE OF THE CLERK
SECRETARY OF STATE

§148-3-1. General.

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

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

1.3. Filing Date. – April 8, 2011

1.4. Effective Date. – April 8, 2011

§148-3-2. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

2.13. "Official business" means business on behalf of the State of West Virginia.

2.14. "Operator" means a person to whom a state owned vehicle is assigned.

2.15. "Secretary" means the Secretary of the Department of Administration.

2.16. "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.

2.17. "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.

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

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

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

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

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

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

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

Vehicles may be titled in the name of the spending unit. The Fleet Management Office will coordinate with spending units to ensure standardized naming convention. For Model Years beginning with 2011, the Fleet Management Office will initiate the titling and registration process, digitize, and safeguard the original title. The original title documents for the Model Years prior to 2011 will be provided to the Fleet Management Office for digitization and safekeeping. Spending units will be provided with web-enabled, secure access to and/or digitized copy of the title documents. Original titling documents will be returned to the spending unit within five (5) business days of a determination by the Department of Administration, Board of Risk and Insurance

Management that the vehicle is no longer insurable; or the vehicle is scheduled for decommissioning activity by the spending unit.

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

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

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

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

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

5.5. Beginning with Model Year 2011 and thereafter, state owned and long-term leased vehicles shall be clearly and permanently marked with either the seal of the State of West Virginia or the seal or insignia of a state agency, board, or commission. The seal shall be produced from reflective material, affixed to the body of the vehicle, and be at least twelve inches in diameter or size from the top left corner to the bottom right corner of the seal or insignia. Each vehicle will be clearly marked with two-inch high lettering above and below the seal. The lettering above the seal shall include the words “State of West Virginia” and shall not be abbreviated. The lettering below or included in the seal or insignia of a state agency, board, or commission shall include the name of the state agency, board, or commission owning or leasing the vehicle and may be abbreviated or continued on multiple lines. Additional distinctive vehicle markings may be added at the discretion of the assigned cabinet-level Secretary. State vehicles shall be licensed with the display State “Official Business Only” license plates. *Provided*, Those state vehicles used for the purposes in which it is in the best interest of the State for such vehicles not to bear markings and “Official Business Only” license plates, such as vehicles used for law enforcement or similar purposes, pursuant to West Virginia Code §17A-3-23 shall be exempt from this requirement.

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

6.1. State owned and leased vehicles may be used or occupied by State employees, non-

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

§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 Unattended Vehicle.

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

8.3. Use of Seat Belts.

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

8.4. Driver's License Required.

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

8.5. Use of Wireless Electronic Communication Devices.

The use of a wireless electronic communication device by the operator of a moving vehicle on a public road or highway is prohibited except when the wireless communication device is a hands-free wireless electronic communication device being used hands-free.

8.5.a. The provisions of this subsection do not apply to an operator who uses a wireless communication device when:

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

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

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

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

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

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

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

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

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

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

8.8.3. No smoking while loading or unloading. Smoking on or about any motor

vehicle while loading or unloading any Class 1 (explosive), Class 3 (flammable liquid), Class 4 (flammable solid), Class 5 (oxidizing), or Division 2.1 (flammable gas) materials is forbidden.

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

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

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

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

§148-3-9. Permissible Uses.

9.1. Generally.

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

9.1.1. Use by multiple employees; or

9.1.2. Use by primarily one (1) employee.

9.2. Use by Multiple Employees.

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

9.3. Use by Primarily One Employee.

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

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

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

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

9.4. Determining Commuting Value

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

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

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

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

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

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

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

The Fleet Management Office may authorize the long-term lease and/or purchase of vehicles by spending units from entities other than the Fleet Management Office, with the spending unit to operate and maintain the vehicles and to assume the responsibility for all vehicle-related expenses and to reimburse the Fleet Management Office for administrative costs.

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

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

10.4. Requirements for Leasing.

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

10.4.1. spending unit requirements and justification;

10.4.2. available inventory or opportunity to transfer vehicles;

10.4.3. available funding to satisfy requirements; and/or

10.4.4. complying with all terms and conditions of lease agreements entered into with the Fleet Management Office.

10.5. Fleet Management Programs

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

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

10.6. Statewide Contracts for Automotive Commodities and Services.

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

10.7. Fuel Purchases.

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

10.8. Responsibilities of Operators and Spending Units.

10.8.1. Routine Maintenance.

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

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

10.8.2. Routine Cleaning.

The routine cleaning of the assigned vehicle, including the interior and exterior of the

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

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

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

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

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

10.10. Fleet Management Office Charges.

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

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

10.10.3. The administrative fee will ensure adequate funding to support personnel salaries, direct and indirect costs, and provide for future fleet-related initiatives which are intended to improve fleet operations and increase cost savings within state spending units.

10.11. Arrearages.

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



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

EARL RAY TOMBLIN
GOVERNOR

ROBERT W. FERGUSON, JR.
CABINET SECRETARY

April 7, 2011

Via Hand-Delivery

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

2011 APR -8 AM 11:30
OFFICE OF THE CABINET SECRETARY OF STATE
FILED

Re: Legislative Rules

Dear Secretary Tennant,

I am enclosing the "Notice of Final Filing and Adoption of a Legislative Rule Authorized by the West Virginia Legislature" as well as the original rules for filing. The proposed rules reflect changes for state owned vehicles, 148 CSR 3. I am sending the rules to Judy Cooper via e-mail as well.

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