

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

Form #2

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2009 JUN 25 PM 4: 12

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Department of Administration TITLE NUMBER: 148

RULE TYPE: legislative 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: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 27, 2009 AT 9:00 am ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Donna Lipscomb, Executive Coordinator
Department of Administration
1900 Kanawha Boulevard, East
Building 1, Room E-119
Charleston, WV 25305
304-558-3392

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


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Agency: Department of Administration

Rule Type: Legislative

Title Number: 148

Cite Authority: 5A-3-48

STATEMENT OF CIRCUMSTANCE AND BRIEF SUMMARY

The rule modifications are being proposed as a result of a Legislative Post Audit Committee report done regarding the Alcohol Beverage Control Administration and oversight of state-owned automobile accidents. Said report recommended the legislative rules be modified to better address situations surrounding accidents and violations of state employees when utilizing a state-owned automobile.

Specifically, the proposed rule:

Adds and revises definitions;

Requires each agency appoint a fleet coordinator;

Clarifies that no passengers, except state employees, are permitted in vehicles without written approval;

Makes the operator personally responsible for citations, warrants or fines regarding the operation or parking of the vehicle;

Requires use of safety belts when in operation;

Requires all operators have a valid driver's license in good standing;

Removes the requirement of the Travel Management Office to monitor driving records of operators;

Removes the requirement for an accidents and violations review committee;

Requires vehicles be kept on State property when not in use;

Prohibits using vehicle for personal use except de minimus use;

Simplifies the way you determine commuting value;

Removes language allowing for use of a privately owned vehicle;

Requires approval by the Travel Management Office prior to purchase of any vehicle;

Requires the purchases of automotive commodities and services be made from the statewide contract;

Requires reimbursement to Travel Management Office for administrative costs;

Removes and replaces language regarding the leasing of vehicles, credit card use, fuel purchases, operator and agency responsibilities, reporting of accidents, and Travel Management Office charges.

TITLE 148
LEGISLATIVE RULE
DEPARTMENT OF ADMINISTRATION

FILED

2009 JUL 25 PM 4:12

SERIES 3
STATE OWNED VEHICLES

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§148-3-1. General.

1.1. Scope. – This Procedural Rule governs all State owned vehicles 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. – ~~May 26, 2005.~~

1.4. Effective Date. – ~~July 1, 2005.~~

§148-3-2. Definitions.

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

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

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

2.4 “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.

~~2.4~~ 2.5 “Official business” means business on behalf of the State of West Virginia.

~~2.5~~ 2.6 “Privately owned vehicle” means a vehicle owned by the operator. “Operator” means a person to whom a state owned vehicle is assigned.

~~2.6~~ 2.7 “Purchasing Division” means the entity of State government within the Department of Administration created by W.Va. Code §5A-1-2.

~~2.7~~ 2.8 “Qualified Nonpersonal Use” means official business use or de minimis personal use, such as stopping for meals while traveling. “Secretary” means the Secretary of the Department of Administration.

~~2.8~~ 2.9 “Secretary” means the Secretary of the Department of Administration. “Spending Officer” means the executive head of a spending unit, or a person designated by him or her, as created by W.Va. Code §5A-1-1.

~~2.9~~ 2.10 “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 West Virginia Legislature, as defined by W.Va. Code §5A-1-1.

~~2.10~~ 2.11 “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.

~~2.11~~ 2.12 “Travel Management Office” means the entity within the Purchasing Division responsible for the storage purchase, lease, maintenance and repairs of all State owned vehicles, except those exempted by W.Va. Code §5A-3-48.

2.13 “Vehicle” means any vehicle less than one (1) ton in weight designed for transporting passengers.

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

~~Questions concerning this rule should be directed to the Department of Administration, Travel Management Office. Interpretations of matters contained within this rule may be issued by the Secretary either directly or through the Administrator of the Travel Management Office, at the discretion of the Secretary.~~

Each agency shall appoint an agency fleet coordinator for the purpose of facilitating communications between the Travel Management Office and the leasing agencies.

§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 Management Office.

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

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

5.2 At the discretion of the Travel Management Office, ~~on behalf of the Secretary,~~ a vehicle lease may be terminated by the Travel 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 either for official business transportation, ~~requirements enroute, at his or her destination, and/or at his or her assigned headquarters, as defined by the Executive Officer of the Department or by the Executive Officer of a spending unit not assigned to a Department.~~

5.4 All vehicles governed by this rule must meet the minimum mileage criteria established by the Travel Management Office. ~~and approved by the Secretary of the Department of Administration.~~ Exceptions to the mileage criteria may be granted by the Travel Management Office with the consent of the Secretary of the Department of Administration 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, as necessary or reasonable. Non-employees are agents, brokers, contractors, persons 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. Necessary and reasonable are relative terms. The use of a vehicle is necessary if it is the best way to accomplish the business objectives of the State of West Virginia; the use of a vehicle is reasonable if the offsetting advantages or the value to the State of West Virginia will surpass the actual costs for providing and operating the vehicle. No passengers other than state employees and/or nonemployees are permitted in vehicles without the specific written approval of the spending officer.~~

~~When State owned vehicles are used by non-employees for other than a temporary assignment, one day or less, advance approval in writing is required to be issued by the Travel Management Office.~~

~~6.2 No passengers, other than state employees and/or non-employees, as necessary or reasonable, are permitted in vehicles without the specific written approval of the Secretary of the Department, or the Executive Office of the spending unit if the spending unit is not part of a Department, to which the vehicle is leased. Non-employees may be agents, brokers, contractors, persons involved in missions of mercy or medical emergency, board or commission members, clients, patients, prisoners, students, or others entrusted to the State for their care, incarceration, placement, or protection, 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.~~

§148-3-7. Insurance Coverage.

~~Liability insurance is provided for vehicles by the State Board of Risk and Insurance Management. Coverage is extended for the protection of the authorized operator and authorized passengers while using a vehicle within the confines of this rule and all applicable laws, ordinances, or rules.~~

§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. Failure to operate a State owned vehicle in a safe and reasonable manner, or in contravention to this rule or any other applicable law, ordinance or rule may result in the suspension of use of vehicles for that operator.~~

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, ~~including towing charges,~~ 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 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.

8.3 Use of Seat Belts.

The operator and front passengers must use ~~combination lap and shoulder safety belts, if available. When combination lap and shoulder safety belts are available in the rear seat of a vehicle, the safety belts must be used:~~ when the vehicle is in operation.

8.4 Driver's License Required.

~~When a lease of a vehicle is requested, an inquiry may be made to the Division of Motor Vehicles of the Department of Transportation for a review of the proposed operator's driving record. All operators must have a valid operator's (driver's) license in good standing.~~

8.5 Injuries.

~~In the event an injury occurs in conjunction with the operation of the vehicle, failure to comply with this rule may result in a determination that the operator or passenger contributed to his~~

or her injuries.

8.6 Reviewing Driving Records of Operators.

~~In the event of an accident, property damage of any kind or any damage to any State-owned vehicle, the Travel Management Office will review the involved operator's driving record with the Division of Motor Vehicles. Additionally, the Travel Management Office will randomly review the driving records of the operators of State-owned vehicles. Results of the Division of Motor Vehicles inquiries which indicate a record of accidents or violations will be brought before an Accidents and Violations Review Committee.~~

~~The Accidents and Violations Review Committee will be comprised of a representative of the Travel Management Office, one representative of the Secretary of Administration's office, and two representatives of the operator's department—one representative selected by the Secretary of that department and the second representative selected by the vehicle operator. Decisions by the committee will be based on the administrative action chart attached hereto as Exhibit A.~~

§148-3-9. Permissible Uses.

9.1 Generally.

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

~~9.2.1 must be kept on State property when not in use (the State property and the residence of the employee cannot be the same except as approved in writing by the Travel Management Office.~~

~~9.2.2 cannot be used for personal purposes except for minimal (de minimus) personal convenience, i.e., stopping for meals while traveling;~~

~~9.2.3 is designated as a "qualified nonpersonal use vehicle."²²~~

9.3 Use by Primarily One Employee.

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

9.3.1 is assigned to an employee that has been required by ~~his or her Department Executive Officer, or the Executive officer of his spending unit if the spending unit has not been assigned to a department,~~ 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 commuting and minimal personal convenience, i.e. stopping for meals while traveling; and

9.3.3 is designated as a “qualified nonpersonal use vehicle” and/or is not assigned to an employee designated a “control employee” or “law enforcement officer” as defined by the Internal Revenue Services of the Department of Treasury; and

9.3.4 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 Management Office.

9.4 Determining Commuting Value

In accordance with Federal Tax Regulations issued by the Internal Revenue Service of the Department of the Treasury, the State of West Virginia will place a “commuting value” of \$1.50 one way or \$3.00 roundtrip per day (or the amount referenced in the “Commuting Valuation Rule” or equivalent of the Department of the Treasury, Internal Revenue Service of the Federal Government rules and/or regulations, whichever is greater) for each day the vehicle is used for commuting purposes based on two (2) methods:

9.4.1. An assignment to an individual employee when used for commuting will have a monthly payroll deduction of three dollars (\$3.00) per business day based on the Division of Personnel’s calendar. For purposes of this computation, business days also exclude annual and sick leave. based on the following:

Business days per year	261
261	
Average non-business days (includes holidays and annual/sick leave)	49
49	
Business days for calculation	212
212	
“Commuting Value” per day	\$3.00
“Commuting Value” per month	\$53.00

~~“Commuting Value” per year~~ ————— ~~\$636.00~~

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 a “Statement of Commuting Value” as designated by the Travel Management Office 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 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.

~~9.5 Use of Privately Owned Vehicles:~~

~~When a State owned vehicle is not available or the operator is not eligible for a vehicle assignment, a privately owned vehicle may be used in lieu of a State owned vehicle. Reimbursement shall be at a rate equal to the amount authorized for privately owned vehicle use stated in the travel regulations governing the operator.~~

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

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

The vehicle must be titled to the State of West Virginia, Department of Administration, Travel Management Office. Agencies must not increase their fleet without prior approval from the Travel Management Office.

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

~~10.1. The Travel Management Office may authorize the lease and/or purchase of vehicles by spending units from entities other than the Travel 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 Management Office for administrative costs.~~

~~10.2 The spending unit will report all vehicle-related activity, assignments and expenses, including administrative and clerical expenses, to the Travel Management Office within the time frame and in the format specified by the Travel Management Office. All leasing, mileage, operator~~

~~and passenger criteria specified in this rule apply to spending unit maintained vehicles unless otherwise specified by the West Virginia Code.~~

~~10.3 A vehicle purchase must be approved by the Travel Management Office prior to the purchase. A retirement form must accompany the request for the purchase of a replacement vehicle, unless otherwise authorized by the Travel Management Office. Upon arrival, the spending unit will proceed with the purchase and will title the vehicle to the State of West Virginia, Department of Administration, Travel Management Office, which will license the vehicle. The replacement vehicle will not be released to the spending unit unless the title is in the name of the State of West Virginia, Department of Administration, Travel Management Office and the vehicle designated for surplus is in the possession of the Travel Management Office or stored by the spending unit as designated by the Travel Management Office.~~

10.3. Leasing Travel Management Office Vehicles.

10.3.1 Generally.

Vehicles shall be leased from the Travel Management Office upon the established terms and conditions and at the rates specified by the Travel Management Office. The Travel 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 Management Office.

10.4 Requirements for Leasing.

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

10.5 Travel Management Office Credit Card.

A credit card is assigned to 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 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 is required by the manufacturer, requested in writing by the spending officer, and approved by the Travel Management Office. Fuel purchases made in violation of this section will be the personal responsibility of the operator.

10.8 Responsibilities of Operators and Spending Units.

10.8.1 Routine Maintenance.

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

10.8.2 Routine Cleaning.

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

10.9 Reporting and Review of Accidents and Violations.

Accidents must be investigated by the spending unit within two (2) calendar days of the accident. The spending officer must provide to the Travel Management Office and BRIM an accident report with sufficient detail to determine the circumstances of the accident.

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

10.10 Travel Management Office Charges.

10.10.1 Invoicing and Payments.

An invoice will be issued on a regular basis.

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 Management Office suspended or may be required to return the leased vehicle to the Travel Management Office.

~~§148-3-11. Leasing Travel Management Office Vehicles:~~

~~11.1. Travel Management Office Leases:~~

~~11.1.1. Generally:~~

~~Vehicles may be leased from the Travel Management Office upon the terms and conditions agreed by the parties and at the rates specified by the Travel Management Office. The Travel Management Office will specify the rates for lease of vehicles to departments, with such rates approved by the Secretary of the Department of Administration. The rates will be specified on a monthly basis per type of vehicle and will provide for all reasonable vehicle expenses, including, but not limited to, authorized fuel purchases, preventative maintenance, general maintenance and repairs, tires, insurance, depreciations, replacement and administrative costs. In addition, the spending unit will pay all vehicle expenses for abuse, misuse and cleaning of the exterior and interior of the vehicle.~~

~~11.1.2. Based on number of operators:~~

~~Vehicles are to be assigned by the Travel Management Office for:~~

~~11.12.a. multiple operators — the vehicle will be used by a number of employees of the spending unit on an “as necessary” basis as determined by the spending unit;~~

~~11.12.b. an individual operator — assigned to and primarily used by one employee.~~

~~11.2. Requirements for Leasing:~~

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

~~11.2.1. spending unit requirements and justification;~~

~~11.2.2. assigned operator qualifications;~~

~~11.2.3. proper and efficient utilization of vehicles assigned to the spending unit;~~

~~11.2.4. available inventory or opportunity to transfer vehicles; and/or~~

~~11.2.5. available funding to satisfy requirements;~~

~~11.3. All Leases with Departments:~~

~~The Travel Management Office will lease all vehicles to a spending unit at a department level, e.g., the Department of Commerce, Labor, & Environmental Resources, the Public Service Commission, or the Department (State Board) of Education.~~

~~11.4. State Owned Vehicle Log:~~

~~Each month the assigned operator of a vehicle must complete a "State Owned Vehicle Log" as designated by the Travel Management Office. This log is to be returned to the Travel Management Office by the vehicle operator. Instructions on what information is to be reported are found on the log. Any questions concerning the completion of the log may be directed to the Travel Management Office or the designated contractor for vehicle services (the designated contractor and applicable telephone numbers are found in the information & registration packet in each vehicle).~~

~~11.5. Travel Management Office Charge/Credit Card:~~

~~A charge/credit card is assigned to vehicles leased by the Travel Management Office. Fuel purchases, repair and maintenance, and towing charges must be authorized by the designated vehicle services contractor and charged via the charge/credit card. All repairs related to an accident must be approved by the Travel Management Office regardless of the estimated amount of the repair.~~

~~Any purchase not made via the charge/credit card assigned to the vehicle must be included on the "State Vehicle Log"; such purchases are considered a personal expense of the vehicle operator and are paid or reimbursed at the sole discretion of the Travel Management Office.~~

~~11.6. Tires and Batteries Purchases:~~

~~Tires and batteries shall be requested through the Travel Management Office so that the~~

~~purchases are made using any statewide contracts in effect.~~

~~11.7. Fuel Purchases.~~

~~11.7.1. Fuel purchases will only be made at state-owned or state-contracted facilities when available.~~

~~11.7.2. Purchases of fuel from self-service facilities other than those owned by the State or under contract to the State may be approved for payment by the executive officer of the spending unit without any action from the Travel Management Office when the purchase is made out-of-state.~~

~~11.7.3. Purchases of fuel from self-service facilities other than those owned by the State may be approved for payment or reimbursement by the Travel Management Office when the purchase is made during emergencies and/or when circumstances are such that the use of state-owned facilities is not reasonable. Such purchases must be justified by the vehicle operator, reviewed, and approved by the Travel Management Office.~~

~~11.7.4. Purchases of fuel at full service prices, if identified as a charged item, may be added to the lease invoice to the leasing spending unit.~~

~~11.7.5. Purchases of the fuel designated by the Travel Management Office for alternative fuel, fuel-flexible, or electric powered vehicles may be approved for payment or reimbursement without any action by the Travel Management Office. Purchases of fuel other than the fuel designated for the vehicle by the Travel Management Office will not be reimbursed and, if identified as a charged item, will be added to the lease invoice issued to the leasing spending unit.~~

~~11.8. Responsibilities of Operators and Spending Units.~~

~~11.8.1. Routine Maintenance:~~

~~Routine checking of the oil level, tired pressure and tire wear is the responsibility of the assigned 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 checked on a regular and routine basis will be charged to 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.~~

~~11.8.2. Routine Cleaning:~~

~~The routine cleanliness 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 reasonable care and cleaning will be charged to 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.~~

~~11.8.3. Operator Deficiencies:~~

~~All operator deficiencies are to be reported to the Travel Management Office as soon as discovered.~~

~~11.9. No Smoking Permitted:~~

~~All state owned vehicles are designated "NO SMOKING"; assigned operators are responsible for any and all costs related to repairs, replacement, cleaning, and/or deodorizing the vehicle due to smoking by either the operator or his/her passenger(s).~~

~~11.10. Reporting of Accidents:~~

~~Accidents, to any degree, must be~~

~~11.10.1. investigated by the operator, and the operator must complete a Division of Motor Vehicle "Operator's or Owner's Accident Report" (DMV 121SE or equivalent), within two (2) calendar days of the accident; and~~

~~11.10.2. reported to the Travel Management Office and/or the vehicle services contractor designated by the Travel Management Office.~~

~~Accidents involving injury or injuries to any party must be immediately reported to a law enforcement agency serving the area in which the injury occurred. Failure to report such an accident can result in criminal charges being filed against the vehicle operator. The Travel Management Office will suspend the operator from using State owned vehicles for failing to immediately report an accident involving injuries.~~

~~11.11. Travel Expenses Accounts vs. State Owned Vehicles Invoices.~~

~~Receipts for use of the state owned vehicles are by invoices issued by or through the Department of Administration. Individual travel expense accounts are to be processed for reimbursement without corresponding receipts or invoices for the use of state owned vehicles, but the travel expense account must reference, by license number, the use of a State owned vehicle for transportation.~~

~~11.12. Travel Management Office Charges:~~

~~11.12.1. Charges.~~

~~The Travel Management Office will specify the rates for lease of vehicles to departments, with such rates approved by the Secretary of the Department of Administration. The rates will provide for reasonable vehicle expenses, including, but not limited to, authorized fuel purchases, preventative maintenance, general maintenance and repairs, insurance, tires, insurance,~~

~~depreciation, replacement and administrative costs. However, the spending unit will be responsible for all expenses related to abuse and/or misuse of the vehicle.~~

~~11.12.2. Invoicing and Payments:~~

~~An invoice will be issued on a regular basis by the Department of Administration to each spending unit leasing vehicles from the Travel Management Office. The amount invoiced per vehicle will include the normal charge for the vehicle based upon the rates established by the Travel Management Office and approved by the Secretary. The rate will include, but be limited to, authorized fuel purchases, preventative maintenance, maintenance and repairs, tires, insurance, depreciation, replacement and administrative costs.~~

~~Each invoice will reference, by license number, the vehicle leased, the monthly base rate for the vehicle, any mileage charges for the use of the vehicle beyond the mileage allotted in the based rate, any miscellaneous charges or credits, the Department of Administration account number to which the payment is to be made, and any other information that the Travel Management Office deems appropriate.~~

~~Payment to the Department of Administration from the spending unit may be from either a single account or multiple accounts based on the spending unit's needs or funding requirements. Each payment must be referenced to a specific invoice.~~

~~11.12.3. Arrearages:~~

~~In order for the Travel Management Office to provide expected and promised services and to maintain secure vendor relationships, any spending unit account that becomes seriously delinquent in paying the Department of Administration will have the charge/credit cards provided by the Travel Management Office suspended for use by those vehicles leased to the spending unit and/or have the vehicles secured by the Travel Management Office, at the discretion of the Travel Management Office. Upon bringing the spending unit account to a current status with the Department of Administration, the cards will be reinstated and/or the vehicles may be returned to the spending unit.~~

~~11.13. Replacement Vehicles:~~

~~Vehicle replacements are determined by a State owned vehicle Replacement Schedule issued by the Travel Management Office and approved by the Secretary of the Department of Administration.~~

EXHIBIT A

~~Administrative Action for State Owned Vehicle Operators~~

~~POINTS ACCIDENTS ACTION~~

~~04 - 06 or 1 Not-At-Fault or Non- Verbal Counseling by the AVRC~~

Preventable	
06 - 08	or 2 Not-At-Fault or Non-Preventable or 1 At-Fault or Preventable
	Written Reprimand and Defensive Driving Course
3 Not-At-Fault or Non-Preventable	
	Written Reprimand and suspension for a Maximum 03 Months
09 - 10	or 2 At-Fault or Preventable
	Suspension for a Minimum 03 Months to a Maximum 12 Months
11 - 12	
or	Suspension until WV operators license is reinstated and operating privileges are approved
SUSPENSION	
or	by the AVRC
REVOCATION	
3 At-Fault or Preventable	Mandatory 1 year suspension of operating privileges

~~Notes: Not-At-Fault Accidents are those where the vehicle operator is not cited by a law enforcement agency official. Non-Preventable Accidents are those that the AVRC determine to be beyond the control of the operator or those that the operator did not contribute to the circumstances that led to the accident.~~

~~At-Fault Accidents are those where the vehicle operator is cited by a law enforcement agency official. Preventable Accidents are those that the AVRC determine to be within the control of the operator or those that the operator contributed or appeared to contribute to the circumstances that led to the accident.~~

~~Suspension or Revocation, in the context of POINTS, is the suspension of an operator's license by the Division of Motor Vehicles. Suspension, in the context of ACTION, is the suspension of operating privileges of a State Owned Vehicle.~~

~~AVRC is the Accident & Violation Review Committee.~~

~~Not to be filed with rule~~

~~Department of Administration Purchasing Division / Travel Management Office~~

~~State Owned Vehicles Rate Chart (Effective 1 July 1991)~~

~~Vehicle Category Rate / Month (Base Rate) Rate / Mile (>1500/Month) Rate
Code Medium Sedan / Minivan \$410.00 .22/mile L1 Large Sedan
\$465.00 .33/mile L2 Medium Pickup Truck \$395.00 .28/mile L4 Cargo/Sport Van
\$395.00 .28/mile L4 Maxiwagon Van \$510.00 .36/mile L5 1 Ton Truck
\$510.00 .36/mile L5 Four Wheel Drive \$510.00 .36/mile L5~~

~~Rates are calculated by applying the "Rate/Month" plus the "Rate/Mile" for all miles driven over 1500 miles per month. Please note that all rates are subject to change as conditions dictate (note that these rates are, on the average, 4.75% less than FY90 rates).~~

~~The "base rate" includes the vehicle lease, authorized fuel purchases, preventative maintenance, general repairs and maintenance, tires, insurance, depreciation, replacement and administrative costs. The "base rate" excludes unauthorized fuel purchases, installation and repairs to agency equipment, exterior & interior cleaning, and repairs required due to operator negligence and/or carelessness.~~

~~NO SMOKING is permitted in State Owned Vehicles.~~

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: State Owned Vehicles

Type of Rule: Legislative Interpretive Procedural

Agency: Department of Administration

Address: 1900 Kanawha Boulevard, East
Building 1, 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.

There will be no fiscal impact as a result of the adoption of this rule. There may be a decrease in administrative duties of the Travel Management Office which could result in more efficiencies. The modifications being proposed are to clarify responsibilities as it relates to state-owned vehicles.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues			

Rule Title: _____

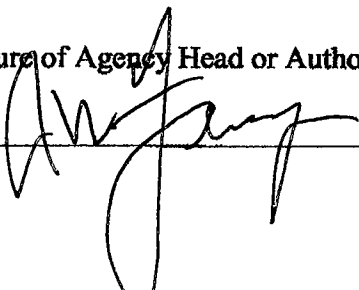
Rule Title: State Owned Vehicles

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

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: 6/24/09

Signature of Agency Head or Authorized Representative




JOE MANCHIN III
GOVERNOR

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

ROBERT W. FERGUSON, JR.
CABINET SECRETARY

June 23, 2009

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 one copy of the documents listed below for filing. The proposed rules are being filed in regard to State Owned Vehicles. I will provide a copy of the enclosed documents to the Legislative Rule Making Review Committee once they are marked filed by your office.

The documents enclosed consist of the following:

1. Notice of Comment Period on a Proposed Rule,
2. Statement of Circumstance and Brief Summary,
3. Proposed Rules, and
4. Fiscal Note for Proposed Rules.

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,


Denna M. Lipscomb
Executive Coordinator

Enclosures