

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

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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, ~~Purchasing Division~~ 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: _____

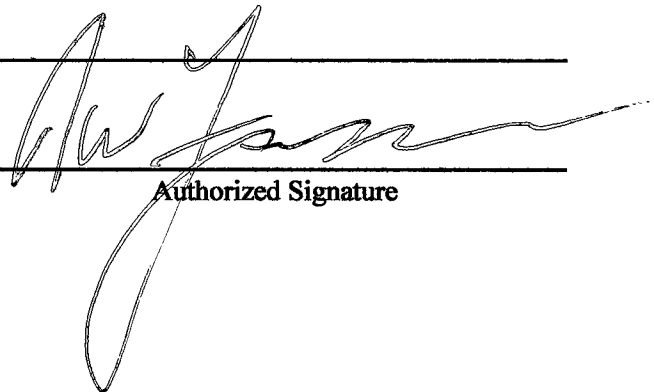
TITLE OF RULE BEING PROPOSED: _____

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

AUTHORIZATION IS CITED IN (house or senate bill number) Senate Bill 240

SECTION §64-2-2, PASSED ON March 11, 2010

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: May 1, 2010



Authorized Signature

**TITLE 148
LEGISLATIVE RULE
DEPARTMENT OF ADMINISTRATION**

**SERIES 3
STATE OWNED VEHICLES**

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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.** – 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. “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. “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.

2.5. "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.

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

2.7. "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 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.

2.14. "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.

2.15. "Vehicle" means any state or agency owned passenger-type vehicle including, but is not limited to, sedans, station wagons, minivans, 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.

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

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 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, 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 for official business transportation.

5.4. All vehicles governed by this rule must meet the minimum mileage criteria established by the Travel Management Office. Exceptions to the mileage criteria may be granted by the Travel Management Office when recommended by the spending officer or his or her designee in writing.

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

State owned vehicles may be used by State employees and/or non-employees, as defined herein. No passengers other than state employees and/or nonemployees 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 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 passengers must use safety belts when the vehicle is in operation.

8.4. Driver's License Required.

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

8.5. Use of Wireless Electronic Communication Devices.

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

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

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

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

§148-3-9. Permissible Uses.

9.1. Generally.

Leased State owned 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.

9.3. 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 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 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 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 a "Statement of Commuting Value," as designated by the Travel 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 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 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.

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.

10.3. Leasing Travel Management Office Vehicles Generally.

The Travel Management Office may lease vehicles to spending units 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.

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

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.



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

JOE MANCHIN III
GOVERNOR

ROBERT W. FERGUSON, JR.
CABINET SECRETARY

March 30, 2010

Via Hand-Delivery

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

OFFICE OF THE
SECRETARY OF STATE

2010 MAR 30 PM 1:26

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, resulting from the passage of Senate Bill 240. As requested, I am also enclosing a disc containing the 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,


Donna M. Lipscomb
Executive Coordinator

Enclosures