

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #3

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FILED

2006 JUL 26 P 3:30

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: 12-4-14

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 18

TITLE OF RULE BEING PROPOSED: Accountability Requirements for State Funds and
Grants

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: 12-4-14

STATEMENT OF CIRCUMSTANCE AND BRIEF SUMMARY

The proposed rules are a result of the passage of SB 4006 during the fourth special legislative session in 2005. The rules establish the procedures for the accountability requirements for state funds and grants. The procedures include reports of disbursements of state and grant funds; audit reports for funds; sworn statements of expenditures made on grants; debarment; state agency reporting requirements; and verification process.

BRIEF SUMMARY OF COMMENTS RECEIVED; AGENCY RESPONSE; AND AMENDMENTS

The Department of Administration received several comments regarding the proposed rules regarding the Administration of State Funds and Grants. The proposed rules that went out for comment reflected series number 16. However, the Secretary of State inadvertently assigned a series number to the rules that had already been taken. Therefore, the series number of the proposed rules is being modified to series number 18 in the Department of Administration's Agency Approved rules. A brief summary of the comments received, our response and amendments are outlined below:

Legislative Services Comments:

Comment 1: The title of the proposed rules appears to have little to do with the "administration" of state funds and grants. Perhaps "accountability requirements for" or "auditing requirements for" might be more descriptive.

Response 1: The Department of Administration agrees that "accountability requirements" may better describe the proposed rules.

Amendment 1: The title of the proposed rules are being modified as a result of this comment.

Comment 2: The proposed rules may be more accurately filed as procedural and interpretive and the process is much shorter than legislative.

Response 2: The Department of Administration was given the authority in SB 4006 to promulgate legislative rules. Since the Department of Administration does not administer grants, it is important that the proposed rules be legislative rules in order to assure that the intent of the legislature is carried out and to assure that the rules set the

accountability requirements on the giving of state funds and grants. Additionally, legislative rules have the force of law which is important when assuring that state funds and grants were spent as they were intended.

Amendment 2 : No amendments are being made as a result of this comment.

Comment 3: The definition of "report" attempts to define in a different manner than the term as defined in the code.

Response 3: The Department of Administration was not attempting to change the definition of "report" but was trying to give more clarification of the definition as it relates to it's use in the proposed rules.

Amendment 3: The definition of "report" will be modified as a result of this comment.

Comment 4: The examples given of receipts in 2.1.e do not demonstrate that the person has expended the funds for merchandise or service.

Response 4: The Department of Administration agrees with this comment. The example will be removed from the proposed rules.

Amendment 4: The rules will be modified as a result of this comment.

Comment 5: The code specifies that state grant funds may be used to pay for the report if the applicable grant provisions allow.

Response 5: The Department of Administration agrees with this comment. The Statute already states this and it takes precedence over the rules. However, we have no problem again stating that specifically in the rules.

Amendment 5: The rules will be modified as a result of this comment.

Comment 6: Any report submitted before the effective date of the rule should be considered acceptable in its current form only if it otherwise complies with the provisions of the code.

Response 6: The Department of Administration agrees with this comment. The Statute already states this and it takes precedence over the rules. However, we have no problem again stating that specifically in the rules.

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

Comment 7: It is not clear what "annual financial statements" section 3.9 is referring to.

Response 7: The Department of Administration will more clearly identify what is meant in the rules so there is no difference in interpretation.

Amendment 7: The rules will be modified as a result of this comment.

Comment 8: Subsection 4.1 appears to impose requirements not contemplated by the provisions of the code by requiring a schedule of state grant receipts and expenditures.

Response 8: Without a schedule of state grant receipts and expenditures, the state agency cannot tell from the financial statement what coverage the audit would provide. The legislature must determine if this requirement should become law with the passage of this provision of the rule.

Amendment 8: No amendment made as a result of this comment.

Comment 9: Subsection 4.2 appears to impose requirements not contemplated by the provisions of the code by requiring a schedule of state grant receipts and expenditures.

Response 9: Without a schedule of state grant receipts and expenditures, the state agency cannot tell from the financial statement what coverage the audit would provide. The legislature must determine if this requirement should become law with the passage of this provision of the rule.

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

Comment 10: As noted in subsection 4.3, most of the provisions appear to qualify as procedural and interpretive rules and should not be legislative rules.

Response 10: The Department of Administration believes that due to the importance of these rules, in order to have the full force of law the rules must be legislative in nature. However, any reference to procedural or interpretive rules will be deleted so there is no confusion or misinterpretation of the rules.

Amendment 10: The rules will be modified as a result of this comment.

Comment 11: The code requires that a sworn statement of expenditures be filed for each grant that is less than \$50,000; for which a report is not required due to the fact that the grantor causes an audit of the grant funds to be conducted by an independent CPA and a copy is available for public inspection; and for which an audit that is performed complies with the Office of Management and Budget Circular A-133. The rules do not reflect all of these.

Response 11: The Department of Administration agrees and will modify the rules accordingly.

Amendment 11: The rules will be modified as a result of this comment.

Comment 12: The rules require the sworn statement be certified by a notary public. The word "certified" is not the correct word to use. The rules should require the sworn statement be executed in the presence of and acknowledged by a person qualified to administer an oath in this state.

Response 12: The Department of Administration intended the sworn statement be executed in the manner suggested in their proposed rules. If the word "certified" does not accomplish this then we are happy to change the word "certified" to "notarized".

Amendment 12: The rules will be modified as a result of the comment.

Comment 13: The rules state that the sworn statement be signed by a senior representative of the person. It should also require the individual

who signs have the authority to bind the person who received the grant.

Response 13: The Department of Administration agrees with the comment and felt that the signature of a senior representative of the person would bind the person who received the grant. However, we will add language to that effect to clarify.

Amendment 13: The rules will be modified as a result of the comment.

Comment 14: In subsection 5.5 the rules use the words "swear and affirm" and this term should be "swear or affirm".

Response 14: The Department of Administration believes this is technical and will modify the rules to state "or" instead of "and".

Amendment 14: The rules will be modified as a result of the comment.

Comment 15: The sworn statement of expenditures submitted before the effective date of the rules should be considered acceptable in its current form only if it otherwise complies with the code.

Response 15: The Department of Administration agrees and believes that this is covered by the Statute which takes precedence. However, we have not problem again stating this in the rules.

Amendment 15: The rules will be modified as a result of the comment.

Comment 16: The rules provides that the grantor has the primary responsibility for determining when a person shall be debarred. The grantor's role should be limited to determining if the person filed the required reports.

Response 16: The Department of Administration agrees with this comment and will reword the rules to clarify who has such responsibility.

Amendment 16: The rules will be modified as a result of the comment.

Comment 17: Any process allowing a grantee the opportunity to demonstrate that it has filed its report or statement or that its filing does meet the statutory and administrative requirements should not be allowed to obtain further grants while the issues are debated.

Response 17: The Department of Administration does not agree with this comment as this could harm the entities expecting payments. We believe that they are innocent until proven guilty and that they have due process rights that must be protected.

Amendment 17: No modifications are being made as a result of this comment.

Comment 18: Subsection 6.3.2 refers to "30 working days". This should be changed to calendar days to remove any confusion.

Response 18: The Department of Administration gave "working days" to give a little extra time. However, we are agreeable to changing the rules to reflect calendar days to avoid confusion.

Amendment 18: The rules will be modified as a result of the comment.

Comment 19: The rules attempt to extend the time a grantor may report noncompliant persons to the Legislative Auditor and there is no Statutory authority to provide this extension.

Response 19: The Department of Administration believes that agencies need time to understand their reporting requirements. The Legislature must determine if they want this provision with the passage of this rule as written or with modifications.

Amendment 19: No modifications are being made as a result of this comment.

Comment 20: Subsections of 8.1.1 and 8.1.2 do not require the statement to be executed in the presence of a notary public.

Response 20: The Department of Administration has no problem modifying the rules to require that the person sign before a notary public.

Amendment 20: The rules will be modified as a result of the comment.

West Virginia Society of Certified Public Accountants comments:

Comment 21: In section 3.2 the last sentence "Specific procedures to apply when performing the agreed-upon procedures or examination engagement are as follows" should be deleted. This is from a previous draft of the rules.

Response 21: The Department of Administration agrees with the comment and the rules will be modified.

Amendment 21: The rules will be modified as a result of the comment.

Comment 22: In section 3.8 the last sentence appears to duplicate the guidance in section 3.6 and is unnecessary.

Response 22: The Department of Administration agrees and will delete the sentence.

Amendment 22: The rules will be modified as a result of the comment.

Comment 23: Section 4.3 refers to a delay in the promulgation of these procedural and interpretive rules but this is not used in sections 3.8 or 5.7 and is essentially the same issue.

Response 23: The Department of Administration agrees and will delete the reference in the rules at section 4.3. This language was inadvertently copied and pasted from one of the agencies' comments and should not be included.

Amendment 23: The rules will be modified as a result of the comment.

Comment 24: Section 5.8 is a duplication and is unnecessary. This language would be more appropriate in the grant agreements than the rules.

Response 24: The Department of Administration agrees with this comment.

Amendment 24: The rules will be modified as a result of the comment.

Comment 25: Section 7.5 the phrase “provides evidence of a reportable condition or violation...” should be modified to include the term “significant deficiency” in order to incorporate new language in the auditing literature.

Response 25: The Department of Administration agrees that this would be an important term to include.

Amendment 25: The rules will be modified as a result of the comment.

Comment 26: Section 7.6 again should be modified to include “significant deficiency” to incorporate new language used in the auditing literature.

Response 26: The Department of Administration agrees and will include the terms.

Amendment 26: The rules will be modified as a result of the comment.

West Virginia Division of Tourism Comments:

Comment 27: I agree with section 3.2.1 that the grantor who awarded the state grants be required to agree to the procedures performed. As the “report” may be used by more than one state agency, shouldn’t the Department of Administration or FARS be required to sign off on the procedures for a report in case it is used by several other agencies?

Response 27: The Department of Administration or FARS should not be required to sign off on agreed upon procedures. The agency giving the grant should agree upon the procedures up front. The rules allow for more than one agreed upon procedures to be in place if different agencies can not agree upon the procedures agreed upon by another agency.

Amendment 27: No modifications being made as a result of this comment.

Comment 28: In section 3.7 I would like to see the reports due within two years of the end of an applicant's fiscal year. This would be so much clearer and less confusing.

Response 28: The Department of Administration believes that the rules as written are more clear than the recommended revision.

Amendment 28: No modifications are being made as a result of this comment.

Comment 29: In section 4.2 "that complies with Generally Accepted Government Auditing Standards" should be removed.

Response 29: The Statute requires they comply with Generally Accepted Governmental Auditing Standard so the Department of Administration felt it should also be included in the rules so that it was clear to the parties involved.

Amendment 29: No modifications are being made as a result of this comment.

Comment 30: In section 5.3.7 this is not necessary for Tourism as there are no ending balances associated with Tourism grants.

Response 30: The Department of Administration will include language in this section to state "if applicable" in the event that the agency does not simply want to put a "zero" balance as the ending balance when they are only reimbursed for costs incurred.

Amendment 30: The rules will be modified as a result of this comment.

Comment 31: In sections 6.7 and 8.2 I would like to see this handled by FIMS as they have the capability of flagging payments to vendors which are out of compliance with state requirements.

Response 31: The Legislative Auditor needs the flexibility as to what computerized data base they wish to utilize. The rules allow that flexibility as written and should not be amended. The rules do not prohibit the Legislative Auditor from using the FIMS system.

Amendment 31: No modifications are being made as a result of this comment.

**TITLE 148
LEGISLATIVE RULE
DEPARTMENT OF ADMINISTRATION**

FILED

SERIES 18
Accountability Requirements for State Funds and Grants 2006 JUL 26 P 3: 30

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§148-16-1. General.

- 1.1. Scope. --
- 1.2. Authority. -- W. Va. Code §12-4-14.
- 1.3. Filing Date. --
- 1.4. Effective Date. --

(entity-wide) audit of the person receiving state grants, under specified circumstances, certain types of independent audits may be substituted for the required "report" as further described in Section 4 of these rules.

§148-16-2. Definitions

2.1. As it relates to these rules, the following definitions shall mean:

2.1.a. "Receipts" shall mean the amount of State grants actually received by a person within a State fiscal year.

2.1.b. "Grantor" means a state spending unit awarding a state grant.

2.1.c. "Person" includes any corporation, partnership, association, individual or other legal entity. The term "person" does not include a state spending unit or a local government as defined in section one-a, article nine, chapter six of the Code of West Virginia.

2.1.d. "Report" means an engagement, such as an agreed-upon procedures engagement or other attestation engagement, performed and prepared by a certified public accountant to test whether state grants were spent as intended. The term "report" does not mean a full-scope audit or review of the person receiving state funds. Reports shall be in accordance with compliance attestation standards established by the AICPA's (American Institute of Certified Public Accountants) Statements on Standards for Attestation Engagements to test whether state grants were spent for the intended purpose. While the term "report" does not mean a full-scope

2.1.e. "State grant" means funding provided by a state spending unit, regardless of the original source of the funds, to a person upon application for a specific purpose. The term "state grant" does not include: (A) Payments for goods and services purchased by a state spending unit; (B) compensation to state employees and public officials; (C) reimbursements to state employees and public officials for travel or incidental expenses; (D) grants of student aid; (E) government transfer payments; (F) direct benefits provided under state insurance and welfare programs; (G) funds reimbursed to a person for expenditures made for qualified purposes when receipts for the expenditures are required prior to receiving the funds: Provided, That notwithstanding the provisions of this subdivision, funding provided pursuant to section twelve, article two, chapter five-b is included within the term "state grant"; (H) retirement benefits; and (I) federal pass-through funds that are subject to the federal Single Audit Act Amendments of 1996, 31 U. S. C. 7501, et seq. The term "state grant" does not include formula distributions to volunteer and part-volunteer fire departments made pursuant to sections fourteen-d and thirty-three, article three, chapter thirty-three of the Code of West Virginia and section seven, article twelve-c of said chapter. Regarding funds reimbursed to a person for expenditures made for qualified purposes when receipts for the expenditures are required prior to receiving the funds (as used within the context of 2.4(G) above) "receipts" is defined as evidence substantiating the occurrence of an event. A receipt for an expenditure must be evidence that the person has actually expended the funds for an good or service and not merely taken possession of the good or received the service.

3.4.5. Time period being reported on.

§148-16-3. Reports of the Disbursement of State Grants

3.1. Any person who receives one or more state grants totaling \$50,000 or more in the aggregate in a state's fiscal year (ending on June 30th) shall file with the grantor a "report" of the disbursement of the state grant funds.

3.2. The requirement for a "report" of the disbursement of state grant funds may be satisfied through the performance of either an agreed-upon procedures engagement or an examination engagement conducted by an independent certified public accountant (CPA) in accordance with compliance attestation standards established by the AICPA's Statements on Standards for Attestation Engagements. The scope of the report is limited to showing that state grants were spent for the intended purpose.

3.3. The Compliance Attestation Standards allow for either an "agreed upon procedures" engagement or an "examination" engagement.

3.3.1. In an examination engagement, the independent certified public accountant makes all judgements on the extent of testing necessary in order for said independent certified public accountant to render his or her opinion as to whether the State grants were spent as intended.

3.3.2. In an agreed upon procedures engagement, the grantor who awarded the State grants is required to agree to the procedures performed in addition to the person receiving the State grants and the independent certified public accountant performing such audit.

3.4. Reports shall contain at a minimum the following:

3.4.1. Identifying State grants information.

3.4.2. Amount of award.

3.4.3. Receipts of funds

3.4.4. Expenditures of funds

3.5. The person may use funds from state grants to pay for the required report if the applicable grant provisions allow and if and appropriately budgeted and allocated to the appropriate funding source(s) by the person.

3.6. In the event that a person receives more than one state grant for the applicable reporting period, such person may comply with this section by filing one report that collectively encompasses all state grants during the applicable reporting period or by filing separate reports for each state grant.

3.7. The person shall submit the required "report" within two years of the end of the person's fiscal year in which the disbursement of state grants by the grantor was made. In instances where the person's fiscal year end is different from that of the state's fiscal year end (June 30), the "report" shall be filed within two years after such person's fiscal year end that ends after the applicable state fiscal year for which the funds were disbursed.

3.8. Any "report" submitted before the effective date of this rule shall be considered acceptable in its current form only if it otherwise complies with the provisions of the WV Code §12-4-14.

3.9. At the option of the person receiving the State grants, such report(s) may be included with the person's annual financial statements that are audited by an independent certified public accountant.

§148-16-4. Audit Reports for funds.

4.1. An audit performed by an independent CPA that complies with the Office of Management and Budget's (OMB) Circular A-133 (Audits of States, Local Governments and Non-Profit Organizations) may be submitted in lieu of the required "report" if said audit includes a schedule of state grant receipts and expenditures and related auditor's opinion on whether said schedule is fairly stated in relation to the financial statements taken as a whole.

4.2. A financial audit performed by an independent CPA that complies with Generally Accepted Government Auditing Standards may be submitted in lieu of the required "report" if said audit includes a schedule of state grant receipts and expenditures and related auditor's opinion on whether said schedule is fairly stated in relation to the financial statements taken as a whole.

4.3. Any independent audit report prepared in accordance with Government Auditing Standards or OMB Circular A-133 and submitted before the effective date of this rule shall be considered acceptable in its current form only if it otherwise complies with the provisions of the WV Code §12-4-14.

4.4. All audit work papers shall be retained by the independent certified public accountant performing such audit for a period of five (5) years following the date of issuance of the audit report.

§148-16-5. Sworn Statements of Expenditures made under Grants.

5.1. Any person who: 1) receives one or more state grants in an aggregate amount of less than \$50,000; 2) is not required to file a report due to the fact that the grantor causes an audit of the grant funds to be conducted by an independent certified public accountant using generally accepted government auditing standards and a copy of the audit is available for public inspection; or 3) is not required to file a report due to the fact that an audit is performed that complies with the Office of Management and Budget Circular A-133 which is substituted for the report, shall file with each grantor a sworn statement of expenditures, notarized by a notary public in good standing with the Secretary of State, for all applicable state grants. The form should indicate that the person has sworn to or affirmed the truthfulness and completeness of the information contained in the statement of expenditures.

5.2. The sworn statement of expenditures may be on a form generated by the person or the grantor, the final decision of which shall rest with the grantor.

5.3. All sworn statements of expenditures shall include, at a minimum, the following information:

5.3.1. Name, address, telephone number and federal employer identification number (FEIN) of the person that received the state grant.

5.3.2. Identifying information about the state grant (e.g. grant number).

5.3.3. Period(s) covered.

5.3.4. Total amount of the award.

5.3.5. Funds received under the grant.

5.3.6. A listing of expenditures to include, at a minimum, the level of detail (categories, line items, cost centers, etc.) as contained within the related grant budget.

5.3.7. Ending balance (remaining balance of funds associated with the state grant), if applicable.

5.4. The following language shall be utilized for the actual sworn statement:

5.4.1. "This is to certify that I have reviewed the enclosed Statement of Grant Receipts and Expenditures submitted herewith and, to the best of my knowledge and belief, said statement represents all financial activities related to the receipt, use and expenditure of funds granted by the [GRANTOR] to [PERSON] and that the expenditures reported were for the purposes intended and in compliance with applicable laws, regulations and the terms and conditions of the grant documents. The Statement of Grant Receipts and Expenditures is presented on the [ACCRUAL / CASH] basis of accounting and is supported by our financial records and related documentation."

5.5. A senior representative who possess the authority to bind the person receiving the state grants (e.g. Chief Executive Officer, Controller, Director of Finance, Chief Financial Officer, etc.) must sign the statement and provide their printed name, title and date of signature, and shall be in a form approved by the grantor of the State grants. The senior representative of the person receiving

the State grants shall swear or affirm that the amounts of disbursements shown on the sworn statement were expended as prescribed by the applicable West Virginia Code. Said signature attesting to the sworn statements shall be notarized by a certified notary public in good standing with the Secretary of State.

5.6. The person shall submit the sworn statement of expenditures within two years of the end of the person's fiscal year in which the disbursement of state grants by the grantor was made. In instances where the person's fiscal year end is different from that of the state's fiscal year end (June 30), the sworn statement of expenditures shall be filed within two years after such person's fiscal year end that ends after the applicable state fiscal year for which the funds were disbursed.

5.7. Any sworn statement of expenditures submitted before the effective date of this rule shall be considered acceptable in its current form only if it otherwise complies with WV Code §12-4-14.

§148-16-6. Debarment.

6.1. Any person failing to file a required "report" or sworn statement of expenditures within the required time period for state grants disbursed by the grantor after July 1, 2003 is barred from subsequently receiving further state grants until the person complies with said reporting responsibilities.

6.2. The grantor that provided the state grant has primary responsibility for determining if the person has filed a required report or sworn statement of expenditures, the date the report or statement was filed, and if the report or statement meets all Statutory and Administrative requirements. Proof of grounds for debarment must be clear and convincing.

6.3. The grantor providing the state grant shall administer the debarment process. The debarment process shall consist of the following:

6.3.1. Once the grantor determines that a person shall be debarred, the grantor shall notify

the person by certified mail, with return receipt requested, of the reasons for the proposed debarment and the causes relied upon for the proposed debarment.

6.3.2. If disputing the proposed debarment, the person must submit their argument in writing to the grantor within 30 calendar days after receipt of the notice.

6.3.3. In the event that a person wishes to contest the grantor's debarment decision, the grantor shall decide the matter in accordance with the provisions of article five, chapter twenty-nine-a of the Code of West Virginia.

6.4. The grantor shall be responsible for notifying the Legislative Auditor when a person has been debarred from receiving state grants.

6.5. A person's failure to satisfy their reporting responsibilities under WV Code §12-4-14 for one state grant precludes the person from receiving other state grants, whether from the same state spending unit for which noncompliance originally occurred or from a different state spending unit.

6.6. The reporting requirements and related penalty provisions associated with WV Code §12-4-14 do not affect a person's ability to apply for federal financial assistance or receive other types of funding, such as those referenced within Section 2.4 of this rule.

6.7. Prior to any grantor providing State grants to a person, the grantor shall first confirm from the Legislative Auditor that the person seeking the State grants has not been debarred.

§148-16-7. Grantor Reporting Requirements.

7.1. Any grantor to provide State grants shall, in a manner designated by the Legislative Auditor, provide information identified in §12-4-14(e) of the WV Code.

7.2. The grantor shall notify each person of the reporting requirements set forth in this section.

7.2.1. For state grants that have already

been fully negotiated and signed by the responsible parties, the grantor may satisfy this requirement through transmittal of an ancillary communication to the person to convey the reporting requirements under WV Code §12-4-14.

7.2.2. For state grants that have yet to be fully negotiated and signed by the responsible parties, the grantor shall incorporate a clause within its formal grant agreement, contractual document or grant award notification letter to convey the reporting requirements under WV Code §12-4-14.

7.3. A grantor shall provide written notice to the Legislative Auditor of any persons failing to file a required "report" or sworn statement of expenditures within the required period for a state grant disbursed after July 1, 2003 for purposes of debarment from receiving state grants.

7.4. The grantor's requirement to report noncompliant persons to the Legislative Auditor is hereby extended until such time as six months after the effective date of these rules.

7.5. If any "report" or sworn statement of expenditures submitted pursuant to the requirements of this section provides evidence of a reportable condition, significant deficiency, or violation, the grantor shall provide a copy of the "report" or sworn statement of expenditures to the Legislative Auditor within thirty days of receipt by the grantor.

7.6. Reportable conditions, significant deficiencies, and violations shall be defined as negative matters noted within the "report", such as deficiencies in internal control; illegal acts; violations of the provisions of contracts or grant agreements; errors; abuse; or any other contingency or matter that could negatively affect or have a negative result on administration of the state grant or related program.

7.7. The grantor shall maintain copies of "reports" and sworn statements of expenditures for public inspection as well as for use in internal audits, performance reviews or other monitoring efforts.

§148-16-8. Verification Process.

8.1. Prior to awarding a state grant, grantors shall take reasonable actions to verify that the person seeking the state grant is not barred from receiving said grant. The verification process may include either of the following:

8.1.1. The grantor may incorporate the following clause within its formal grant agreement (or other contractual) document, to be signed by a senior representative of the person before a notary public in good standing with the Secretary of State. "Under penalty of law for false swearing (WV Code §61-5-3), [GRANTEE] certifies that by signing this grant agreement on the signature page that [GRANTEE] and all related parties have filed all reports for state grants received as required under WV Code §12-4-14."

8.1.2. The grantor may require a separate notarized sworn statement of compliance from the person seeking the state grant stating that the person has filed all "reports" and sworn statements of expenditures pursuant to the requirements of WV Code §12-4-14. A senior representative of the person must sign the notarized statement and provide their printed name, title and date of signature. The sworn statement shall include the following clause: "Under penalty of law for false swearing (WV Code §61-5-3), [PERSON] certifies that by signing this sworn statement that [PERSON] and all related parties have filed all reports for state grants received as required under WV Code §12-4-14."

8.2. In addition to verification obtained directly from the person, the grantor shall obtain confirmation from the Legislative Auditor that the person seeking the state grant has not been identified as one who is debarred or who has otherwise failed to file a "report" or sworn statement of expenditures. The grantor may satisfy this requirement by accessing the computerized database as maintained by the Legislative Auditor.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 148, Series 16

Type of Rule: X Legislative Interpretive Procedural

Agency: Department of Administration

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

Phone Number: 304- 558-3392 Email: dlipscomb@wvadmin.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 proposed rules are being promulgated as a result of the passage of Senate Bill 4006 in 2005. The rules establish the procedures for the accountability requirements of state funds and grants. There should be minimal fiscal impact upon the costs and revenues of state government as the current Statute already mandates the filing of the reports, audits and sworn statements outlined in the proposed rules.

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 | 2005 Increase/Decrease (use "-") | 2006 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 | 0 | 0 | 0 |

Rule Title Accountability Requirements of state funds and grants.

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

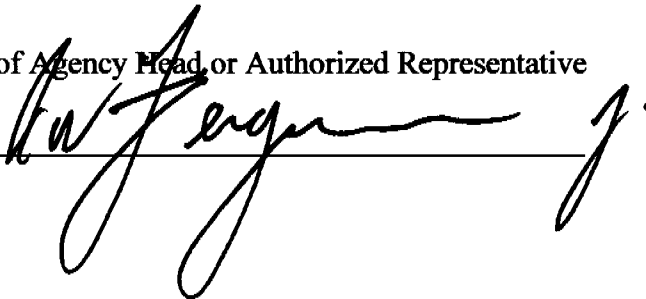
The rules designate a debarment procedure which may have a minimal cost to the state depending upon whether a current state employee is assigned to be a hearing examiner and/or administrative law judge to hear contested cases or whether the agency hires a contract hearing examiner and/or administrative law judge. However, the recipients of the state funds or grants are entitled to due process regardless of whether the proposed rules are adopted.

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: 7-26-06

Signature of Agency Head or Authorized Representative



QUESTIONNAIRE

DATE: July 26, 2006

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: 8, Series 18, Accountability Requirements for State Funds and Grants

1. Authorizing statute(s) citation 12-4-14

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 16, 2006

b. What other notice, including advertising, did you give of the hearing?

E-mailing to state employees that administer grants and e-mailing to the West Virginia Society of Certified Public Accountants for distribution to their members.

c. Date of Public Hearing(s) or Public Comment Period Ended:

July 17, 2006

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 26, 2006

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)

N/A

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 16, 2006 through July 17, 2006

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 26, 2006

Via Hand-Delivery

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

Re: Legislative Rules

Dear Secretary Ireland,


I am enclosing an original and fifteen copies of the documents listed below for filing. The proposed rules are in regard to Accountability Requirements for State Funds and Grants. I will provide the copies 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 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,
7. Disc containing 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