

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

Form #4

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2006 NOV 20 AM 9: 29

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Department of Administration TITLE NUMBER: 148

CITE AUTHORITY: 12-4-14

AMENDMENT TO AN EXISTING RULE: YES NO

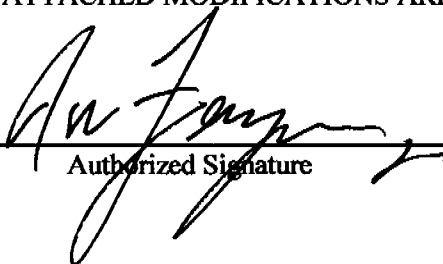
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

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 RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



Authorized Signature

TITLE 148
LEGISLATIVE RULE
DEPARTMENT OF ADMINISTRATION

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SERIES 18
Accountability Requirements for State Funds and Grants

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§148-18-1. General.

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

spending unit or a local government as defined in section one-a, article nine, chapter six of the Code of West Virginia.

2.1.f. "Receipts" means the amount of state grants actually received by a grantee within a State fiscal year.

2.1.g. "Report" means an engagement, such as an agreed-upon procedures engagement or an examination engagement, performed and prepared by an independent 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 grantee. 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 (entity-wide) audit of the grantee, under specified circumstances, certain types of independent audits may be substituted for the required report as further described in Section 4 of these rules.

§148-18-2. Definitions

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

2.1.a. "Agreed upon procedures engagement" means an engagement performed by an independent certified public accountant to prepare a report required under this section, where the grantor who awarded the state grant(s) is required to agree to the procedures performed in addition to the grantee and the independent certified public accountant performing such engagement.

2.1.b. "Examination engagement" means an engagement performed by an independent certified public accountant to prepare a report required under this section, where 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.

2.1.c. "Grantee" means a person who is a recipient of a state grant.

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

2.1.e. "Person" includes any corporation, partnership, association, individual or other legal entity. The term "person" does not include a state

2.1.h. "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. With regard to the amount of state grant funds which require compliance with this section, the receipt or disbursement of state grants shall mean the amount of state grant funds actually received by a grantee within a State fiscal year, and does not mean the total amount of state grants awarded but not yet paid out to a grantee within a State fiscal year. 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, and where the receipts for the expenditures evidence that the person has actually expended the funds for a good or service and not merely taken possession of the good or received the service: 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.

(J) 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.

§148-18-3. Reports of the Disbursement of State Grants

3.1. Any grantee 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.

3.4. 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

3.4.5. Time period being reported on.

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

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

3.7. The grantee shall submit the required report within two years of the end of the grantee'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 grantee, such report(s) may be included with the grantee's annual financial statements which are audited by an independent certified public accountant.

§148-18-4. 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 of the grantee's financial statement 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.

§148-18-5. Sworn Statements of Expenditures made under Grants.

5.1. Any grantee 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 grantee 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 in a form approved by the grantee 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 grantee.

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 [GRANTEE] 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 grantee (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 grant(s). The senior representative of the grantee 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 grantee shall submit the sworn statement of expenditures within two years of the end of the grantee’s fiscal year in which the disbursement of state grants by the grantor was made. In instances where the grantee’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 grantee’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.

§148-18-6. Debarment.

6.1. Any grantee 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 grantee complies with said reporting responsibilities and is otherwise in compliance with the provisions of this rule.

6.2. The grantor that provided the state grant has primary responsibility for determining if the grantee 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 grantee shall be debarred, the grantor shall notify the grantee 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 grantee 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 grantee 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 grantee has been debarred from receiving state grants.

6.5. A grantee’s failure to satisfy their reporting responsibilities under WV Code §12-4-14 for one state grant precludes the grantee 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 grantee’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.

§148-18-7. Grantor Reporting Requirements.

7.1. Any grantor that provides 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 grantee 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 grantee 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 grantee 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 obligation to report noncompliant grantees to the Legislative Auditor shall begin 180 days 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, including deficiencies in internal controls; illegal acts; violation of a provision of a

contract or grant agreement; 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, 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.

7.7. 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.

§148-18-8. 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 shall include one of the following:

8.1.1. A 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), [PERSON] certifies that by signing this grant agreement on the signature page that [PERSON] and all related parties have filed all reports for state grants received as required under WV Code §12-4-14."

8.1.2. 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.



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

ROBERT W. FERGUSON, JR.
CABINET SECRETARY

JOE MANCHIN III
GOVERNOR

November 14, 2006

Via Hand-Delivery


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

**Re: Accountability Requirements for State Funds and Grants,
148-CSR-18**

Dear Secretary Ireland,

I am enclosing the original and ten copies of the "Notice of Rule Modification of a Proposed Rule" regarding Accountability Requirements for State Funds and grants. These rules contain modifications requested at the Legislative Rule-Making interim meeting. The Department of Administration has agreed to the modifications. It is my understanding that your office will maintain the original in your files. Once the ten copies have been stamped filed I will provide the copies to the Legislative Rule-Making office.

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

DMP:dp
Enclosures
cc: Debra Graham, Counsel for Legislative Rule-Making