

Department of Administration Legislative Rules Title 148

148-01 Purchasing Division

Description: This comprehensive rule governs the process of operations for the purchase of commodities, services and printing by the Purchasing Division.

First Promulgated: December 29, 1982

Subsequent Modifications: 1989, 1991, 1993, 1996, 1999, 2007, 2009, 2015, 2016 and 2018

Recommendation: Continue without additional modification.

Reasoning: The rule is currently before the Legislative Rulemaking Review Committee with modifications as a result of the passage of SB 283, which made changes throughout §5A-3-1, *et seq.*, which is the article governing state government procurement. The rule underwent a thorough review with updates prior to the public comment period, which ended in July.

148-03 State Owned Vehicles

Description: This rule establishes guidelines for the management of vehicles with a vehicle rating of one-ton or less owned or possessed by the state.

First Promulgation: December 6, 1992

Subsequent Modifications: 2005, 2010, 2011, 2013, 2014, 2015 and 2018

Recommendation: Continue without additional modification.

Reasoning: The rule is currently before the Legislative Rulemaking Review Committee with modifications as a result of the passage of HB 4015 during the Regular Session, which made significant changes to the management of state vehicles by the Fleet Management Division. The rule was rewritten in 2017 to provide updates in custom and usage of state vehicles, and underwent further review in its entirety prior to the public comment period in July 2018.

148-04 State Plan for the Operation of the West Virginia Agency for Surplus Property

Description: The rule establishes the process of operations for the State Agency for Surplus Property.

First Promulgation: December 22, 1983

Subsequent Modifications: 2015

Recommendation: Continue without change.

Reasoning: The broad statutory authority for the State Agency for Surplus Property to operate a surplus state property program pursuant to both state and federal law still exists, as does the authority of the Department of Administration to promulgate any rules necessary to operate the program. The rule was last modified in 2015 to bring

the rule into conformity with changes to the federal law providing for the states' surplus property programs. Any changes to the rule must stay within the parameters of the federal authorizing statute.

148-06 Parking

Description: This rule provides for the regulation of parking of motor vehicles on state owned property.

First Promulgation: April 3, 1991

Subsequent Modifications: 1996, 2003, 2004, 2009, 2018

Recommendation: Continue without modification.

Reasoning: The rule was revised last session to update some of the parking areas for the Capitol Complex, including the new lot on California Avenue. In that process, the rule was given a full review for any updates and clarifications, which were included in the revision. Statutory authority still exists exclusively for the Department of Administration to regulate parking on state property, therefore the rule must continue.

148-07 State Purchasing Card Program

Description: The rule provides the operative procedures for the State Purchasing Card Program.

First Promulgation: April 18, 2002

Subsequent promulgations: None

Recommendation: Repeal.

Reasoning: The rule appears to have been superseded by 155 CSR 7. According to W.Va. Code §12-3-10a, the authorization to develop a Purchasing Card program lies with both the Department of Administration Purchasing Division and the State Auditor's Office. The role of the Purchasing Division today is to obtain a contract for purchasing card services, and the State Auditor's Office administers the program. The rulemaking authority lies exclusively with the State Auditor's Office as the code reads today. At one time, both agencies may have shared more of the role of developing and administering the program, but authority lies with the State Auditor at this time, therefore this rule should be repealed.

148-08 Reporting of State Assets by Financial Institutions

Description: The rule establishes guidelines for the reporting of state assets held by financial institutions to the Department of Administration, the State Treasurer, the Investment Management Board and the Legislative Auditor.

First Promulgation: April 16, 1992

Subsequent Modifications: None

Recommendation: Continue without modification.

Reasoning: The requirement that financial institutions report annually any state assets and their value still exists in W.Va. Code §5A-1-9, and the authority for the Department

to promulgate the rule describing the reporting requirements. This information is necessary to both the Department and to the State Treasurer for the completion of financial reports of both agencies.

148-09 Use of Domestic Aluminum, Glass or Steel Products in Public Works Projects

Description: The rule clarifies and provides guidelines for the purchase of aluminum, glass and steel from domestic sources for public works projects expected to cost more than \$50,000 or expected to use more than 10,000 pounds of steel.

First Promulgation: July 1, 1994

Subsequent promulgations: None

Recommendation: Continue without modification.

Reasoning: Article 19 of Chapter 5 provides that certain public works projects source aluminum, glass and steel from domestic producers, and requires the Commissioner of Finance and Administration (previously under the Department of Administration, reorganized to the Finance Division within the Department) to promulgate rules providing the process by which bids for the projects will be evaluated. Because the standard for the materials in the projects is statutory and has not been amended, and the requirement to promulgate a rule directing the application of the standard is also unchanged, the rule must continue.

148-11 Rules for Selecting Design Builds Under the Design-Build Procurement Act

Description: The rule sets forth procedures for agencies to use in selecting Design Builders to provide combined design and construction services for projects authorized by the Design Build Board.

First Promulgation: June 1, 2013

Subsequent Promulgations: 2001, 2006

Recommendation: Continue without modification.

Reasoning: W.Va. Code §5-22A-6 requires the Department of Administration to promulgate rules that provide agencies seeking to utilize the design-build model guidelines in selecting a suitable design build contractor. The guidelines are based on best practices and have not changed significantly since the inception of the rule.

148-12 General Administration of Records Management and Preservation

Description: The rule sets forth the standards, procedures and techniques for effective management of public records.

First Promulgation: July 1, 2003

Subsequent promulgations: None

Recommendation: Continue with modifications.

Reasoning: The rule could be updated to reflect current practices of agencies in using electronic files in daily operations.

148-13 Records Retention and Disposal Scheduling

Description: The rule establishes the procedure and standards for agencies to use in adopting public records retention and disposal schedules.

First Promulgation: July 1, 2003

Subsequent promulgations: None

Recommendation: Continue without modification.

Reasoning: The requirement for agencies to adopt and have approved by the state records administrator a retention and disposal schedule exists in statute, therefore the procedures for adoption and approval in the rule must continue.

148-14 Management of Records Maintained by the Records Center

Description: The rule establishes policies and standards for the storage of records by the Records Center.

First Promulgation: July 1, 2003

Subsequent promulgations: None

Recommendation: Continue without modification.

Reasoning: The statute provides the Department with the authority to promulgate rules as necessary for a statewide records management program. The current contract for operation of the Record Center adheres to the policies and standards established in the rule. The contract is set to expire next year, and the solicitation for a new contract will follow the standards established in the rule, so the rule must continue to continue to provide for a records storage facility.

148-15 Technology Access for Visually Impaired

Description: The rule provides minimum standards and criteria to be used in approving procurements by state agencies for adaptive technologies for nonvisual access uses.

First Promulgation: July 1, 2003

Subsequent promulgations: None

Recommendation: Continue without modification.

Reasoning: W.Va. Code §18-10N-3 requires the Purchasing Division to non-visual access standards for information technology systems purchased by state agencies to be used as adaptive technology for individuals with disabilities. Although the technology available has changed, the rule provides definitions, exceptions and performance standards that are largely unchanged for agencies to use as guidance in employing adaptive technology, therefore the rule must continue without modification.

148-16 Cannibalization of State Property

Description: The rule provides procedures for the disposal of surplus state property by cannibalization for use of component parts.

First promulgation: 2006

Subsequent promulgations: 2007

Recommendation: Continue without modification.

Reasoning: W.Va. Code §5A-3-45 authorizes the State Agency for Surplus Property to utilize cannibalization as a means of disposal of state property and to promulgate rules providing the process for disposal, therefore the rule must continue as cannibalization continues to be authorized by statute as well as the directive for the agency to promulgate rules governing such.

148-17 Waste Disposal of State Property

Description: The rule provides the process by which commodities owned by the state can be disposed of as waste.

First promulgation: July 1, 2007

Subsequent promulgations: None

Recommendation: Continue without modification.

Reasoning: W.Va. Code §5A-3-45 authorizes the State Agency for Surplus Property to dispose of state-owned commodities as waste in a landfill and to promulgate rules providing the process for disposal, therefore the rule must continue as disposal as waste continues to be authorized by statute as well as the directive for the agency to promulgate rules governing such.

148-18 Administration of State Funds and Grants

Description: The rule establishes the standards and procedures for recipients of state funds and grants to account for the manner in which those funds are spent.

First Promulgation: May 1, 2007

Subsequent promulgations: None

Recommendation: Continue without modification.

Reasoning: Recipients of state funds and grants are required to file a report detailing the expenditure of such funds by W.Va. Code §12-4-14, and the Department of Administration is directed in the same statute to promulgate rules to assist in the fulfillment of the reporting requirement. The process and standards provided in the rule largely follow the requirements of the statute, therefore must continue without any statutory changes.

148-19 Leasing of Space and Acquisition of Real Property on Behalf of State Spending Units

Description: The rule provides for the selection, negotiation, and acquisition by contract or lease of all grounds, buildings, office space or other space required by any executive branch spending units.

First promulgation: July 1, 2008

Subsequent promulgations: 2018

Recommendation: Continue without further modification.

Reasoning: The proposed rule revisions are currently before the Legislative Rulemaking Review Committee as a result of legislation requiring the reporting of all inventory of real property held by the state by the Real Estate Division. The rule underwent a thorough review with proposed revisions this year.

148-20 Controlling the Public Land Corporation's Sale, Lease, Exchange or Transfer of Lands and Minerals

Description: The rule provides the standards and procedure for the sale, lease, exchange or transfer of public lands and minerals by the Public Land Corporation.

First Promulgation: July 1, 2008

Subsequent promulgations: None

Recommendation: Continue without modification.

Reasoning: The Public Land Corporation is charged with the disposition of real property held by the state and is authorized to promulgate rules to guide the disposition of that property by sale in §5A-11-4. Therefore, the rule must continue as the statutory duties of the Public Land Corporation, the means of sale, and the authorization for rules to direct the sale continue.

148-21 Payment for the Payment of Unused Sick Leave to Employees

Description: The rule provides the procedures for the payment to eligible employees for unused and accrued sick leave.

First Promulgation: August 8, 2010

Subsequent promulgations: None

Recommendation: Continue without modification.

Reasoning: The program allowing eligible employees to cash out unused accrued sick leave remains in statute at W.Va. Code §5-5-6, as does the requirement that the Department of Administration promulgate rules to provide the process, application, and a means for the Department to collect reimbursement from the employer agency. The application process and the reimbursement process are unchanged since the rule was originally filed. As long as the both the program and the obligation of the Department to promulgate a rule remains in statute, the rule must continue. The program is essentially in hiatus, however, due to a lack of funding. Two years ago, the Legislature transferred the remaining balance in the statutory account to general revenue and has not reappropriated any funds to pay out employees who wish to cash out sick leave. If it is the desire of the Legislature to end the program, §5-5-6 should be repealed. If the

legislature wishes to continue the program, funding must be appropriated before any future activity can occur.

148-22 Certification for Small, Women, and Minority-Owned Businesses

Description: The rule provides standards for the certification program for small, women or minority-owned businesses by the Purchasing Division of the Department of Administration.

First Promulgation: July 1, 2012

Subsequent promulgations: None

Recommendation: Continue without modification.

Reasoning: W.Va. Code §5A-3-59 requires agencies to submit to the Department of Administration progress reports on small, women and minority owned businesses. The statute also requires the Department of Administration to promulgate a rule establishing a certification program for the businesses. The requirements of the certification are unchanged since inception, and since the statutory requirement for the certification process remains, the rule must continue.

Division of Personnel
Legislative Rules Title 143

143-01 Administrative Rule of the West Virginia Division of Personnel

Description: The rule is the comprehensive rule providing for the implementation of the powers and duties of the agency set forth in code.

First Promulgation: July 1, 1989

Subsequent promulgations: 1991, 1993, 1995, 1998, 2000, 2003, 2005, 2007, 2010, 2012, 2016

Recommendation: Continue without modification.

Reasoning: Because the rule is a comprehensive rule governing the implementation of the statutory charges in Article 6 of Chapter 29, each time legislation amends the article, there is a good chance the rule will also require amendment to remain in compliance with the statute. The rule is frequently reviewed and revised, almost every other year. At this time, no revision is necessary, as the rule remains in conformity with the statute providing for the rulemaking authority.

143-02 Leave Donation Program

Description: The rule provides for the eligibility, standards and process necessary to implement the Voluntary Leave Donation Program.

First promulgation: July 1, 1996

Subsequent promulgations: None

Recommendation: Continue without modification

Reasoning: W.Va. Code §29-6-27 requires the agency to establish a Voluntary Leave Donation Program through legislative rule. The qualifications for eligibility to be a recipient, as well as the process by which leave may be donated remain unchanged to date. The rule must continue to allow the agency to meet its statutory obligation.

143-03 Workers Compensation Temporary Total Disability

Description: The rule provides the method for calculating compensation and benefits accrual for employees that have a designated work-related temporary total disability.

First promulgation: July 1, 2000

Subsequent promulgations: 2007 and 2012

Recommendation: Continue without modification.

Reasoning: W.Va. Code §23-4-1 provides for the ability of state employees who have been designated as temporary totally disabled as a result of a work-related injury to continue to be eligible for benefit accrual while the employee is absent from work. The rule also directs the Division of Personnel to promulgate legislative rules to implement the provisions, including providing for the calculation of accrued benefits. The rule is based upon the rights afforded in the statute and the method of calculating the benefits

accrued remains unchanged since the last modification, therefore the rule should continue without modification at this time.

143-04 Pre-Employment Reference and Inquiries Rule

Description: The rule provides direction for employers to verify eligibility and qualifications of prospective employees.

First promulgated: July 1, 2005

Subsequent promulgations: None

Recommendation: Continue without modification.

Reasoning: The rule sets forth the process for employers to verify the eligibility and qualifications of prospective employees, as well as rights and responsibilities of prospective employees in the application process. It is unnecessary to change this guidance at this time. The statute provides broad rulemaking authority to the Division, and the rule distills the requirements of state and federal statute for employers. The rule must continue so that the Division can meet its broad statutory mission.

143-05 Paid Leave for Organ Donation

Description: The rule provides eligibility standards and the process by which employees may take paid leave to donate an organ.

First promulgation: July 1, 2005

Subsequent promulgations: None

Recommendation: Continue without modification.

Reasoning: The code provides that state employees that donate an organ may receive paid leave during the time of the organ donation. The code also provides the Division with general statutory authority to implement the article. The rule provides for the process to make a request for this paid leave, as well as qualifications for eligibility. The rule must continue since the statute authorizing the leave remains in effect.

143-06 Appeal of Adverse Suitability Determination

Description: The rule provides the process by which an employee may challenge a suitability determination, as well as the applicable standards for the review of such challenges.

First promulgation: November 23, 2006

Subsequent promulgations: None

Recommendation: Continue without modification

Reasoning: The process by which employees may challenge suitability determination or the standards for review of the decision remain unchanged to date. The Division is granted broad rulemaking authority to implement the article. The ability of employees to challenge such decisions remains a necessary component of a merit-based employment system, therefore the rule should continue.

143-07 Interdepartmental Transfer of Permanent State Employees

Description: The rule provides for the process of transferring a permanent state employee between agencies, provides rights of employees in the transfer, and for tracking of data.

First promulgation: May 7, 2007

Subsequent promulgations: None

Recommendation: Continue without modification

Reasoning: The process provided in the rule follows the broad provisions of the statute allowing for the transfer of employees between agencies. The rule should continue absent any changes to the statute providing for transfer, §5F-2-7.

143-08 Reimbursement of Compensation Paid to State Employees for Training, Education and Professional Development

Description: The rule provides the format for and process for state employees to request reimbursement for education, training or professional development. The rule also provides a process by which employers can recover the costs if the employee voluntarily separates from employment.

First promulgation: July 1, 2009

Subsequent promulgations: None

Recommendation: The code provides that employees may receive reimbursement for training, education and professional development, and that employers may recover those costs if the employee voluntarily leaves the position within a specified period of time. The statute also requires the Division of Personnel to establish a process by which the reimbursement can be made to either the employee or employer, depending on the case. The rule's provisions do not require modification at this time, therefore the rule should continue.

Consolidated Public Retirement Board

Legislative Rules Title 162

162-01 General Provisions

Description: This is a comprehensive rule providing the general administration criteria of the retirement plans administered by the Consolidated Public Retirement Board (CPRB).

First promulgation: August 4, 1993

Subsequent promulgations: 2000, 2001, 2004, 2005, 2008, 2009, 2011, 2013

Recommendation: Continue without modification

Reasoning: The comprehensive rule provides much of the authority for general administration of the retirement plans overseen by CPRB. As such, when legislation affecting the plans is adopted, often the rule requires modification to remain in conformity with the statute. The rule is frequently reviewed for any necessary updates, and none are necessary at this time. The board has broad rulemaking authority to implement the provisions of the article.

162-02 Benefit Determination and Appeal

Description: The rule provides the process by which a state employee may apply for and be granted disability retirement, and the process by which the Board reviews the applications.

First promulgation: May 31, 1995

Subsequent promulgations: 2001, 2002, 2003, 2004, 2005, 2006, 2008, 2009, 2013, 2016

Recommendation: Continue without modification.

Reasoning: The rule recently underwent modification, during which time a thorough review was conducted and necessary revisions made. The Board is granted broad authority to promulgate legislative rules necessary to administer the retirement plans offered, and the rule is within the statutory authority and presently necessary.

163-03 Teachers' Defined Contribution Retirement System

Description: The rule is the interpretation, application and administration of the Teachers' Defined Contribution Retirement System by the Board.

First promulgation: August 4, 1993

Subsequent promulgations: 2000, 2001, 2005, 2007, 2008, 2011, 2016

Recommendation: Continue without modification

Reasoning: The rule recently underwent modification, during which time a thorough review was conducted and necessary revisions made. The Board is granted broad authority to promulgate legislative rules necessary to administer the retirement plans offered, and the rule is within the statutory authority and presently necessary.

162-04 Teachers' Retirement System

Description: The rule is the interpretation, application and administration of the Teachers' Retirement System by the Board.

First promulgation: July 1, 2000

Subsequent promulgations: 2001, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2013, 2016

Recommendation: Continue without modification.

Reasoning: The rule recently underwent modification, during which time a thorough review was conducted and necessary revisions made. The Board is granted broad authority to promulgate legislative rules necessary to administer the retirement plans offered, and the rule is within the statutory authority and presently necessary.

162-05 Public Employees Retirement System

Description: The rule is the interpretation, application and administration of the Public Employees Retirement System by the Board.

First Promulgation: August 4, 1993

Subsequent promulgations: 2000, 2001, 2003, 2005, 2007, 2008, 2008, 2009, 2010, 2011, 2012, 2013, 2014

Recommendation: Continue without modification.

Reasoning: The rule recently underwent modification, during which time a thorough review was conducted and necessary revisions made. The Board is granted broad authority to promulgate legislative rules necessary to administer the retirement plans offered, and the rule is within the statutory authority and presently necessary.

162-07 Refund, Reinstatement, Retroactive Service, Loan and Correction of Error Interest Factors

Description: The rule identifies and addresses the interest rates at which CPRB shall apply to members transactions, which from time to time, occur in the Board's administration of the state's several retirement systems.

First promulgation: July 1, 2000

Subsequent promulgations: 2007, 2008, 2009, 2010, 2011, 2012, 2015, 2016

Recommendation: Continue without modification.

Reasoning: The rule recently underwent modification, during which time a thorough review was conducted and necessary revisions made. The Board is granted broad authority to promulgate legislative rules necessary to administer the retirement plans offered, and the rule is within the statutory authority and presently necessary.

162-08 Service Credit for Accrued and Unused Sick and Annual Leave

Description: The rule governs a member's ability to use accrued unused sick and annual leave for additional retirement service credit in certain retirement plans administered by the Board.

First promulgated: April 10, 2002

Subsequent promulgations: 2006, 2009, 2015, 2016

Recommendation: Continue without modification.

Reasoning: The rule recently underwent modification, during which time a thorough review was conducted and necessary revisions made. The Board is granted broad authority to promulgate legislative rules necessary to administer the retirement plans offered, and the rule is within the statutory authority and presently necessary.

162-09 West Virginia State Police

Description: The rule is the interpretation, application and administration of the West Virginia State Police Retirement System by the Board.

First promulgated: May 1, 2003

Subsequent promulgations: 2004, 2005, 2006, 2008, 2009, 2010, 2011, 2012, 2013, 2016

Recommendation: Continue without modification.

Reasoning: The rule recently underwent modification, during which time a thorough review was conducted and necessary revisions made. The Board is granted broad authority to promulgate legislative rules necessary to administer the retirement plans offered, and the rule is within the statutory authority and presently necessary.

162-10 Deputy Sheriff Retirement System

Description: The rule is the interpretation, application and administration of the Deputy Sheriff Retirement System by the Board.

First Promulgated: June 1, 2005

Subsequent promulgations: 2006, 2007, 2008, 2009, 2015, 2016

Recommendation: Continue without modification.

Reasoning: The rule recently underwent modification, during which time a thorough review was conducted and necessary revisions made. The Board is granted broad authority to promulgate legislative rules necessary to administer the retirement plans offered, and the rule is within the statutory authority and presently necessary.

Information Services and Communications Division Legislative Rules Title 161

161-01 Plan of Operation

Description: The rule provides the plan of operation for the Information Services and Communications Division for providing data processing, telecommunications and central mail services to state agencies.

First Promulgation: April 3, 1991

Subsequent promulgations: None

Recommendation: Continue without modification

Reasoning: While the rule has not been updated recently, it describes items such as the frequency by which rates for services may be adjusted, the process by which the Division invoices agencies for services provided, and a procedure should adjustments be made to charges for services. These functions remain unchanged although the types of services and technology employed by the agency may have evolved. The Department of Administration is authorized to promulgate any rules necessary to facilitate the delivery of these services to state agencies in §5A-7-2.

161-02 Telecommunications Payments by Spending Units

Description: The rule provides the process for payment of telecommunications invoices from authorized vendors on behalf of state agencies, a process to contest a telecommunications invoice, and the process by which the Division receives reimbursement for the payments on the state agencies' behalf.

First Promulgation: July 1, 2005

Subsequent promulgations: None

Recommendation: Continue without modification.

Reasoning: The Division continues to be statutorily obligated to pay invoices for telecommunications services on behalf of state agencies, and continues to have statutory authority to promulgate rules to implement the provisions of the enabling statute as per §5A-7-4a. These processes are unchanged since the rule's inception, and the agency sees no necessary modifications.

**Committee for the Purchase of Commodities and Services from the
Handicapped
Legislative Rules Title 186**

186-01 Rules and Regulations for Fair Market Price Determination

Description: The rule provides the process by which the Committee will determine fair market price of commodities and services, responsibilities of the Central Non-Profit Agency (CNA), as well as standards for fair market prices.

First Promulgation: October 19, 1990

Subsequent promulgations: 1993, 2009

Recommendation: Continue without modification.

Reasoning: The Committee is charged with determining the fair market prices of commodities and services offered through eligible vendors and monitoring the performance of the CNA in managing the contracts and services offered. The Committee continues to apply the standards in the rule, with no reason for modification at this time. The Committee continues to have statutory authority to administer the program and promulgate any rules necessary.

186-03 Rules and Regulations Statewide Contract

Description: The rule provides the process for the determination for the commodities and services to be offered on the statewide contract by the Committee.

First promulgation: June 17, 1993

Subsequent promulgations: 2009

Recommendation: Continue without modification

Reasoning: W.Va. Code §5A-3A-4 charges the Committee with determining the commodities and services and their fair market prices to include in the statewide contract, and the article provides specific rulemaking authority to determine the prices and produces and services offered. The method to determine which commodities and services to include in the statewide contract, and the process to revise those selections does not need modified at this time.

186-04 Rules for Qualifications for Participation

Description: The rule sets forth the qualifications for a vendor to be eligible to participate in the program administered by the Committee.

First promulgation: October 19, 1990

Subsequent promulgations: 1993, 1995, 2003, and 2009

Recommendation: Continue without modification.

Reasoning: While there is no specific authorization for the Committee to develop rules providing for qualifications of vendors to participate, the program must contain a delineation of those eligible to participate base upon the census of employees with

disabilities, in order to serve the purpose of providing opportunities for employment for the disability community in West Virginia. The Committee does have broad rulemaking authority to promulgate any necessary rules to carry out the provisions of the article. It is not necessary to make any changes to qualifications for eligible vendors at this time.

186-05 Rules for Monitoring the Central Non-profit Agency

Description: The rule provides additional responsibilities and benchmarks to ensure that the CNA meets its charge to facilitate the delivery of commodities and services from eligible vendors that meet state specifications at a fair price.

First promulgation: June 21, 2004

Subsequent promulgations: None

Recommendation: Continue without modification.

Reasoning: The enumerated additional responsibilities and benchmarks are still applicable in measuring the performance and compliance with statute and rules of the CNA. Committee has specific authority to monitor and oversee the CNA in the performance of its duties, and has specific authority to promulgate rules necessary to oversee the CNA.

Office of Technology
Legislative Rules Title 163

163-01 Procedures for Sanitizaion, Retirement and Disposition of Information Technology Equipment

Description: The rule provides the process and standards for the sanitization of sensitive data from technology equipment before transfer or disposal.

First promulgation: July 1, 2005

Subsequent promulgations: None

Recommendation: Continue without modification.

Reasoning: While the technology and equipment might have changed since the inception of the rule, the protocol to which it is sanitized, has not. The code, in §5A-6-4, requires the Chief Technology Officer to ensure that technology equipment is properly “wiped” of confidential or private data before it is sold, transferred to another agency, or disposed of. The statute provides no direction for the Chief Technology Officer to meet the requirement, however, does provide rulemaking authority necessary to carry out the provisions of the article, therefore the rule must continue.

Ethics Commission's Legislative Rules - Title 158

Series 01 Confidentiality

First promulgation: June 1, 1990

Subsequent modification: September 1, 1993, and April 20, 2006

Recommendation: Continue without modification.

Reasoning: The rule should continue without change as it sets forth the Ethics Commission's rules of confidentiality for complaint and investigative documents.

Series 03 Purchase, Sale or Lease of Personal Property

First promulgation: July 1, 2009

Subsequent modification: None.

Recommendation: Modify.

Reasoning: The Rule should be modified to comply with requirements of W. Va. Code § 6B-2-5(h) (to provide guidelines for granting an exemption relating to real property; to establish standards for granting an exemption is when a person is "adversely affected," and to increase \$25 personal property exception to \$100).

Series 05 Administrative Law Judge Procedural Rule

First promulgation: March 18, 2005

Subsequent modification: None.

Recommendation: Modify.

Reasoning: This Rule should be modified to correct technical errors and to make it consistent with Procedural Rules amended in 2018 governing the processing of Ethics Act complaints (Title 158, Series 16 and Series 17). The Rule also should be modified to reduce the number of Ethics Commission members required to approve a final decision from six to five because only nine members now serve on the Commission. When this Rule was promulgated in 2005, 12 members served on the Commission.

Series 06 Private Gain, Including Nepotism

First promulgation: June 1, 1992

Subsequent modification: May 15, 2017

Recommendation: Continue without modification.

Reasoning: This Rule was modified in 2017 to strengthen a provision prohibiting nepotism.

Series 07 **Gifts & Charitable Solicitation**

First promulgation: June 1, 1992

Subsequent modification: July 1, 2008

Recommendation: Continue without modification.

Reasoning: No substantive changes are needed.

Series 08 **Interest in Public Contracts**

First promulgation: June 1, 1992

Subsequent modification: July 1, 2009

Recommendation: Continue without modification.

Reasoning: No substantive changes are needed.

Series 11 **Employment**

First promulgation: June 1, 1992

Subsequent modification: July 1, 2009

Recommendation: This Rule should be modified to permit ratification of a temporary employment exemption at the next Commission meeting rather than within 45 days of receipt of the exemption request.

Reasoning: This modification is necessary because there are times when the Commission does not have a monthly meeting and/or an exemption request is not received in time to include it on the meeting agenda.

Series 12 **Lobbying**

First promulgation: June 1, 1992

Subsequent modification: July 1, 2003; April 20, 2006, and July 1, 2009

Recommendation: Continue without modification.

Reasoning: No substantive changes are needed.

Series 13 **Code of Conduct for Administrative Law Judges**

First promulgation: May 9, 2005

Subsequent modification: April 20, 2006 (added two-year statute of limitations as the 2005 Rule did not contain a statute of limitations).

Recommendation: Continue without modification.

Reasoning: The standards of conduct in the Rule appear to adequately establish guidelines to govern the conduct of administrative law judges.

- Series 14 **Filing of Verified Time Records**
- First promulgation: April 20, 2006
Subsequent modification: July 1, 2009
Recommendation: Modify by making technical changes.
Reasoning: The Rule adequately establishes a procedure for the filing of verified time records by public employees who have other public employment or hold another public office. As authorized by W. Va. Code § 29A-1-3a, the Ethics Commission will make technical amendments to the Rule to correct several technical errors in the Rule.
- Series 15 **Lobbyist Compliance Audits**
- First promulgation: July 1, 2006
Subsequent modification: None.
Recommendation: Continue without modification.
Reasoning: This Rule is required by W. Va. Code § 6B-3-11.
- Series 16 **Complaints, Probable Cause Review Board and Investigations**
- First promulgation: October 14, 2005
Subsequent modification: April 12, 2018
Recommendation: Continue without modification.
Reasoning: This Rule was modified in 2018.
- Series 17 **Hearings**
- First promulgation: September 10, 2005
Subsequent modification: May 25, 2018
Recommendation: Continue without modification.
Reasoning: This Procedural Rule was modified in 2018.
- Series 18 **Ethics Training Requirements for Designated Public Officials**
- First promulgation: July 1, 2006
Subsequent modification: None.
Recommendation: Continue without modification.
Reasoning: No modifications are necessary.

Series 19 West Virginia Ethics Commission Procedures

First promulgation: April 20, 2006

Subsequent modification: November 8, 2014, and May 25, 2018

Recommendation: Continue without modification.

Reasoning: This Rule was modified in 2018.

Series 20 Forms

First promulgation: May 1, 2011

Subsequent modification: None.

Recommendation: Continue without modification.

Reasoning: This Rule is required by W. Va. Code § 6B-2A-1(b).

Board of Risk and Insurance Management Legislative Rules Series 115

115CSR1 – Mine Subsidence Insurance

First Promulgation: August 3, 1984

Subsequent Modifications: On August 15, 1985 an emergency rule amending and adding new sections was filed. This emergency rule expired on November 17, 1986 after being in effect for 15 months. The notice of expiration noted that the legislative rule was awaiting legislative authorization by the 1987 Legislature. The amended Legislative rule was effective on June 12, 1987.

The rule was next amended with an effective date of May 8, 2002. The amendments were proposed to clarify language; to permit BRIM to audit participating insurers for accuracy of reporting; and to provide an alternative for dispute resolution.

The rule was next amended with an effective date of April 1, 2007. The amendments made the rule available for those insureds with “self-insurance pools”.

The most recent amendments to the rule were filed on September 15, 2016 as an emergency amendment following the passage of H.B. 4734 during the 2016 regular session, which increased the reinsurance limits for mine subsidence insurance. The amendments were needed to provide premium rates for the additional amount of insurance limits, modify the claim handling process and modify the Reinsurance Agreement form.

The current Legislative Rule which replaced the emergency rule filed pursuant to H.B. 4734 became effective on July 1, 2017.

Recommendation: The rule should continue. It is based on a statutory requirement that insurers licensed to sell fire policies in the state make mine subsidence insurance available to our citizens. The reinsurance program administered by BRIM under this rule is authorized by W. Va. Code § 33-30-15. The rule is needed because it establishes the processes under which the program operates, the rates for the coverage, the policy forms, and the reinsurance agreement form that insurers must execute to participate in this required program.

115CSR2 – Public Entities Insurance Program

First Promulgation: The rule was initially filed as an emergency rule on January 12, 1989. The Legislative rule became effective on April 5, 1990.

Subsequent Modifications: The rule was amended to authorize BRIM to provide liability and property insurance to emergency medical service agencies through the Public Entities Insurance Program following passage of HB 4581 and HB 2122 in 2002 and 2003, respectively. The effective date of the amended rule was April 16, 2004.

The rule was next amended to establish specific underwriting criteria and procedures for cancellation or non-renewal of coverage. The rule as amended was effective on July 1, 2005.

Recommendation: The rule should continue because it sets forth procedures and requirements supporting BRIM's program of liability and property insurance for public subdivisions, charitable organizations, and emergency medical service agencies. BRIM was established as an alternative market for these coverages for political subdivisions and charitable organizations in 1986 when Governor Moore declared an emergency resulting from the inability of these entities to obtain these coverages in the commercial market and the negative impact on services for our citizens. Governor' Moore's executive order followed the Legislature's passage of SB 3, authorizing BRIM to provide these coverages to these entities. BRIM is not a competitor to the private market, but rather is available when needed due to the cyclical nature of liability insurance, and this rule supports the program.

115CSR3 – Procedural Rule for State Board of Risk and Insurance Management

First Promulgation: The initial Legislative rule was effective on February 9, 1990.

Subsequent Modifications: The rule was amended to delete provisions relating to the Public Entities Insurance Program in light of the promulgation of series 2, discussed above. When the Public Entities Insurance Program was first established and implemented, the rules governing the program were in this series. The amendments made other minor changes.

Recommendation: The rule should continue as it sets forth procedural rules governing the Board.

115CSR4 – Discontinuation of Professional Malpractice Insurance

First Promulgation: The rule was initially promulgated with an effective date of April 14, 1992. The original rule effective April 14, 1992 provided for the discontinuation of a professional malpractice insurance program that was provided by HB 4151, amending W. Va. Code § 29-12-5c, enacted March 10, 1990. Pursuant to HB 4151, if participation in the professional malpractice insurance program was insufficient to make it economically feasible, then the program could be discontinued by Legislative rule. The purpose of the rule therefore was to discontinue that program.

Subsequent Modifications: On September 27, 2001, an emergency rule was filed to repeal the rule, which had discontinued the medical professional insurance program, in the midst of a special session to address the medical malpractice crisis of that time resulting in private health care providers being unable to obtain medical malpractice insurance. The repeal of the rule was considered necessary to once again assist physicians in obtaining medical malpractice insurance.

By notice dated February 18, 2002, the Secretary of State provided notice that the Legislative rule expired on December 26, 2001 due to the failure to file with the LRMRC within 90 days after conclusion of the comment period. The current status of the rule, therefore, continues to be the version with the effective date of April 14, 1992, which discontinued the professional malpractice insurance program.

Recommendation: No changes are recommended, as there is no longer a medical malpractice program at BRIM for private health care providers and no current need for one.

115CSR5 – Rules Governing the Filing of Written Notification Concerning Incidents

First Promulgation: The rule was initially promulgated with an effective date of June 1, 2000. The rule established a procedure for BRIM to provide applicable forms to its insured in order for them to properly and promptly notify VRIM of potential liability claims against the state or its employees.

Subsequent Modifications: None

Recommendation: The rule should continue as is because it sets forth requirements and responsibility for reporting potential claims and losses to BRIM and provides the Loss Notice form for doing so.

115CSR6 – Preferred Medical Liability and High Risk Medical Liability Program

First Promulgation: The rule was initially promulgated with an effective date of February 26, 2002. The rule implemented the Preferred Medical Liability Program and the High Risk Medical Liability Program, which was authorized pursuant to HB 601 and designated therein to be an exempt Legislative rule. The Legislature provided that the rules were not subject to the provisions of sections 9 through 16, article 3, chapter 29A of the Code. This initial rule was approved by the Board of Directors of BRIM on February 26, 2002.

Subsequent Modifications: Amendments were proposed to the rule in 2003 to add optometrist as an affected health care provider and to allow discussion of certain personal or financial information regarding health care providers to occur in executive session of the BRIM Board. By letter dated January 23, 2004, the BRIM Executive Director notified the Secretary of State that BRIM requested to withdraw the proposed amendments to the rule because the medical professional liability program would sunset effective June 30, 2004. Modifications to the rule at that time were therefore considered unnecessary.

Recommendations: The medical malpractice insurance program for private health care providers has been discontinued. Should a need arise in the future for BRIM to act as an alternative to the commercial market for this coverage, W. Va. Code § 29-12-5 states that the Legislature can adopt a concurrent resolution to reestablish the programs:

If, after the first day of September, two thousand two, the board has assigned coverages or transferred all insurance obligations and/or risks of existing or in-force contracts of insurance to a third-party medical professional liability insurance carrier, and the board otherwise has no covered participants, then the board shall not thereafter offer or provide professional liability insurance to any health care provider pursuant to the provisions of subsection (c) of this section or the provisions of article twelve-b of this chapter unless the Legislature adopts a concurrent resolution authorizing the board to reestablish medical liability insurance programs.

While the rule would almost certainly need to be amended should a resolution to reestablish the programs be adopted, BRIM recommends allowing the rule to remain in the event that the commercial market for medical malpractice insurance hardens to the point that BRIM is again needed as an alternative. However, BRIM will not oppose a suggestion that it be repealed.

115CSR7 – Patient Injury Compensation Fund

First Promulgation: The rule was initially promulgated with an effective date of July 1, 2005. The rule governs the implementation, administration and operation of the Patient Injury Compensation Fund ("PICF"), created by W. Va. Code § 29-12D-1, *et seq.* The purpose of the PICF is to provide fair and reasonable compensation to qualified claimants in medical malpractice actions for economic damage awards that are uncollectible because of amendments made by the Legislature to limit the recovery of economic damages. The rule was initially filed for public comment on July 23, 2004 pursuant to rule-making authority in W. Va. Code § 29-12D-2(a)(6).

Subsequent Modifications: Amendments were proposed to the rule on June 6, 2016 as an emergency rule, following passage of SB 602 during the 2016 regular session. This bill closed the PICF to new claims filed on or after July 1, 2016 and established on-going funding sources to pay the claims filed through June 30, 2016. A compromise among stakeholders led to the closure of the fund and the new funding sources, which were necessary because the Legislature failed to establish funding beyond the initial transfers into the fund when it was first created. The rule needed to be updated to reflect these changes to the law. The emergency rule became effective on July 1, 2016. The Legislative rule-making process was also followed and the current version of the Legislative rule became effective on May 1, 2017.

Recommendation: The rule should remain active because the PICF will continue to be administered by BRIM until the claims are paid in full, or until the funding sources expire and BRIM transfers remaining funds (if any) to the General Revenue Fund on June 30, 2022. While the Legislature again extended the funding sources with SB 576 passed during the regular 2018 Legislative session, further changes to the rule are not considered necessary at this time.