

**WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III  
ADMINISTRATIVE LAW DIVISION**

Form #4

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2003 NOV -4 P 4:01

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

AGENCY: WV State Auditor's Office TITLE NUMBER: 155

CITE AUTHORITY: WV Code 12-3-10a

AMENDMENT TO AN EXISTING RULE: YES  NO

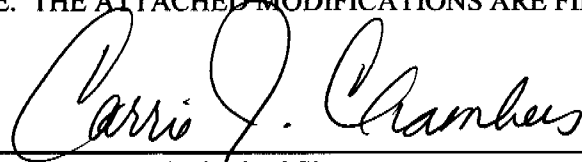
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 7

TITLE OF RULE BEING AMENDED: "State Purchasing Card Program"

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

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



# State of West Virginia

Office of the State Auditor  
Building 1, Room W-100  
Charleston, West Virginia 25305

Glen B. Gainer III  
State Auditor

Telephone: (304) 558-2251  
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Internet: <http://www.wvauditor.com>

November 3, 2003

Ms. Judy Cooper  
Director  
Administrative Law Division  
Secretary of State's Office  
Capitol Complex  
Charleston, West Virginia 25305

RE: 155CSR7 – "State Purchasing Card Program"

Dear Ms. Cooper:

This letter will serve as my approval to file the above-referenced rule as "Notice of Rule Modification of Proposed Rule" with your office and the Legislative Rule-Making Review Committee.

If you should have any questions concerning the above, please call Carrie Chambers in my office at 558-2251. Your assistance in this filing is very much appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Glen B. Gainer III".

Glen B. Gainer III  
State Auditor

Attachment

## **155CSR7 – “State Purchasing Card Program”**

### **Brief Summary of the Proposed Rule with Statement of Circumstances Constituting the Rule:**

**This rule is an explanation and clarification of operative procedures for the State Purchasing Card Program. This Program provides an alternative process for the purchase of and payment for goods and services in Transactions which do not exceed the Transaction Limit.**

**The proposed amendments are necessary to conform to the mandates of Legislation passed during the 2003 Legislative Session - - HB 2224, WV Code 18B-5-9, relating to higher education fiscal responsibility (copy attached).**

□  
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 155CSR7 - "Purchasing Card Program"

Type of Rule:  Legislative     Interpretive     Procedural

Agency: WV State Auditor's Office

Address: Room W-100 Capitol Complex

Charleston, West Virginia 25305

Attn: Carrie J. Chambers

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<b>ESTIMATED TOTAL COST</b>	-0-	-0-	-0-	-0-	-0-
<b>PERSONAL SERVICES</b>	-0-	-0-	-0-	-0-	0-
<b>CURRENT EXPENSE</b>	-0-	-0-	-0-	-0-	-0-
<b>REPAIRS &amp; ALTERATIONS</b>	-0-	-0-	-0-	-0-	-0-
<b>EQUIPMENT</b>	-0-	-0-	-0-	-0-	-0-
<b>OTHER</b>	-0-	-0-	-0-	-0-	-0-

2. Explanation of Above Estimates:

N/A

3. Objectives of These Rules:

Explanation and Clarification of Operative Procedures for the State Purchasing Card Program

Rule Title: 155CSR7 - "State Purchasing Card Program"

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

N/A

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

N/A

C. Economic Impact on Citizens/Public at Large.

N/A

Date: June 30, 2003

Signature of Agency Head or Authorized Representative:

Carrie J. Chamber

1 ENROLLED

2 H. B. 2224

3  
4 (By Delegates Williams, Shaver, Tabb,  
5 Canterbury, Hamilton, Sobonya and Howard)

6  
7 [Passed March 8, 2003; in effect from passage.]  
8  
9

10 AN ACT to repeal section two, article eight, chapter eighteen-b of  
11 the code of West Virginia, one thousand nine hundred thirty-  
12 one, as amended; to amend and reenact section one, article  
13 five, chapter five of said code; to amend and reenact section  
14 two, article one, chapter eighteen-b of said code; to further  
15 amend said article by adding thereto two new sections,  
16 designated sections eight and ten; to amend and reenact  
17 section three, article one-a of said chapter; to amend and  
18 reenact section six, article one-b of said chapter; to further  
19 amend said article by adding thereto a new section, designated  
20 section ten; to amend and reenact sections three, four and  
21 eight, article three-c of said chapter; to amend and reenact  
22 sections three, four, five, six and seven, article five of  
23 said chapter; to further amend said article by adding thereto  
24 a new section, designated section nine; to amend article six  
25 of said chapter by adding thereto a new section, designated

1 report semiannually to the legislative auditor, all sales of  
2 commodities made during the preceding six months. The report shall  
3 include a description of the commodities sold, the name of the  
4 buyer to whom each commodity was sold, and the price paid by the  
5 buyer.

6 (c) The proceeds of sales or transfers shall be deposited in  
7 the state treasury to the credit on a pro rata basis of the fund or  
8 funds from which the purchase of the particular commodities or  
9 expendable commodities was made. The commission or governing  
10 board, as appropriate, may charge and assess fees reasonably  
11 related to the costs of care and handling with respect to the  
12 transfer, warehousing, sale and distribution of state property that  
13 is disposed of or sold pursuant to the provisions of this section.  
14 **§18B-5-9. Higher education fiscal responsibility.**

15 (a) The commission shall ensure the fiscal integrity of any  
16 electronic process conducted at its offices or at any institution  
17 using best business and management practices.

18 (b) The commission shall implement a process whereby, to the  
19 maximum extent practicable, employees of the commission and any  
20 state institution of higher education receive their wages via  
21 electronic transfer or direct deposit.

22 (c) Notwithstanding the provisions of section ten-a, article  
23 three, chapter twelve of this code, the amount of any purchase made  
24 with a purchasing card used by the commission or an institution may  
25 not exceed five thousand dollars. Subject to approval of the

1 purchasing division of the department of administration, any  
2 routine, regularly-scheduled payment, including, but not limited  
3 to, utility payments and real property rental fees may exceed this  
4 amount limit. The commission or an institution may use a  
5 purchasing card for travel expenses directly related to the job  
6 duties of the traveling employee. Traveling expenses may include  
7 registration fees and airline and other transportation  
8 reservations, if approved by the administrative head of the  
9 institution. Traveling expenses may not include fuel or food  
10 purchases. The commission and each institution shall maintain one  
11 purchase card for use only in and for situations declared an  
12 emergency by the president of the institution and approved by the  
13 chancellor. Such emergencies may include, but are not limited to,  
14 partial or total destruction of a campus facility; loss of a  
15 critical component of utility infrastructure; heating, ventilation,  
16 or air conditioning failure in an essential academic building; loss  
17 of campus road, parking lot or campus entrance; or a local,  
18 regional, or national emergency situation that has a direct impact  
19 on the campus.

20 (d) Notwithstanding the provisions of section ten-f, article  
21 three, chapter twelve of this code, or any other provision of this  
22 code or law to the contrary, by the thirtieth day of June, two  
23 thousand four, the auditor shall accept any receiving report  
24 submitted in a format utilizing electronic media and from the  
25 effective date of this section shall conduct any audit or

1 investigation of the commission or any institution at its own  
2 expense and at no cost to the commission or institution.

3 (e) The Legislature finds that an emergency exists, and,  
4 therefore, by the first day of July, two thousand three, the  
5 commission shall file an emergency legislative rule in accordance  
6 with the provisions of article three-a, chapter twenty-nine-a of  
7 this code. The rule shall provide for institutions individually or  
8 cooperatively to maximize their use of any of the following  
9 purchasing practices that are determined to provide a financial  
10 advantage:

- 11 (1) Bulk purchasing;
- 12 (2) Reverse bidding;
- 13 (3) Electronic marketplaces; and
- 14 (4) Electronic remitting.

15 (f) Each institution shall establish a consortium with at  
16 least one other institution in the most cost-efficient manner  
17 feasible, to consolidate the following operations and student  
18 services:

- 19 (1) Payroll operations;
- 20 (2) Human resources operations;
- 21 (3) Warehousing operations;
- 22 (4) Financial transactions;
- 23 (5) Student financial aid application, processing and  
24 disbursement;

1 (6) Standard and bulk purchasing; and

2 (7) Any other operation or service appropriate for  
3 consolidation as determined by the commission.

4 (g) An institution may charge a fee to each institution for  
5 which it provides a service or performs an operation. The fee rate  
6 shall be in the best interest of both the institution being served  
7 and the providing institution, as approved by the commission.

8 (h) Any community and technical college, college and  
9 university may provide the services authorized by this section for  
10 the benefit of any governmental body or public or private  
11 institution.

12 (i) Commencing with the two thousand four fall academic term,  
13 each institution shall reduce its number of low-enrollment sections  
14 of introductory courses. To the maximum extent practicable,  
15 institutions shall use distance learning to consolidate the course  
16 sections. The commission shall report the progress of the  
17 reduction to the legislative oversight commission on education  
18 accountability by the first day of December, two thousand four.

19 (j) An institution shall use its natural resources and  
20 alternative fuel resources to the maximum extent feasible. The  
21 institution may supply the resources for its own use and for use by  
22 any other institution. The institution may supply the resources to  
23 the general public at fair market value. An institution shall  
24 maximize all federal or grant funds available for research  
25 regarding alternative energy sources, and may develop research  
26 parks to further the purpose of this section and to expand the

1 economic development opportunities in the state.

2 (k) Any cost-savings realized or fee procured or retained by  
3 an institution pursuant to implementation of the provisions of this  
4 section shall be retained by the institution.

5 (l) In assuring the fiscal integrity of processes implemented  
6 under this section, at a minimum, the commission has the following  
7 responsibilities:

8 (1) To conduct a performance audit of the policies, procedures  
9 and results of the procurement of goods and services by the state  
10 institutions of higher education;

11 (2) To make progress reports on the implementation of this  
12 section to the legislative oversight commission on education  
13 accountability throughout the two thousand three interim meetings  
14 period;

15 (3) To make a comprehensive report to the legislative  
16 oversight commission on education accountability by the first day  
17 of December, two thousand three, on the results of the performance  
18 audit, together with any recommendations for additional actions  
19 that might be taken to improve the efficiency, effectiveness and  
20 economy of the administrative operations of the state institutions  
21 of higher education and the commission.

22 (m) The commission shall report annually to the legislative  
23 oversight commission on education accountability regarding any  
24 savings achieved by implementing the provisions of this section.

25 **ARTICLE 6. ADVISORY COUNCILS.**

FILED

**TITLE 155  
DEPARTMENT OF ADMINISTRATION  
PURCHASING DIVISION AND STATE AUDITOR**

2003 NOV -4 P 4: 02

**SERIES 7  
STATE PURCHASING CARD PROGRAM**

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**(EDITOR'S NOTE: 148CSR HAS BEEN MOVED TO 155CSR7. TECHNICAL CLEANUP  
WILL BE MADE AT A LATER DATE)**

**§155-7-1. General.**

1.1. Scope. -- This Legislative Rule is an explanation and clarification of operative procedures for the State Purchasing Card Program.

This program provides an alternative process for the purchase of and payment for goods and services in Transactions which do not exceed the Transaction Limit.

1.2. Authority. -- W. Va. Code §12-3-10a.

1.3. Filing Date. -- ~~April 3, 2003~~

1.4. Effective Date. -- ~~April 3, 2003~~

**§155-7-2. Definitions.**

2.1. "Auditor" means the Auditor of the State of West Virginia.

2.2. "Cardholder" means the individual responsible for and named on the purchasing card.

2.3. "Director" means the Director of the Purchasing Division of the Department of Administration.

2.4. "Emergency management or response personnel" means all persons acting under color of authority of state law engaged in rescue efforts, emergency or disaster relief recovery or coordination of emergency services, and are identified as such by the Governor, set forth in subsection 3.2 of this rule.

2.5. "Goods" means commodities, supplies, materials, printing, equipment, and any other articles or items used by or furnished to a spending unit.

2.6. "Maintenance" means services to maintain an item of equipment or computer software, including parts incidental to providing the service.

2.7. "Point of Sale Vendor" means the point of sale or supplier of goods or services purchased with the Purchasing Card, not the State Purchasing Card Provider.

2.8. "Purchasing card" or "card" means the charge card authorized by the Director to provide payment for Transactions.

2.9. "Purchasing Card Authorization Administrator" or "Authorization Administrator" means the individual designated by the Director to coordinate the Purchasing Card Program.

2.10. "Purchasing Card Coordinator" or "Coordinator" means the individual designated by the spending officer to coordinate the State Purchasing Card Program.

2.11. "Purchasing Card Provider" or "Provider" means the entity providing the State with Purchasing Card services.

2.12. "Services" means the furnishing of labor, time or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. Services include maintenance and utilities, but do not include tax reportable services.

2.13. "Spending officer" means the executive head of a spending unit, or a person designated by him or her.

2.14. "Spending unit" means a department, agency or institution of State government for

which an appropriation is requested, or to which an appropriation is made by, the Legislature.

2.15. "State Purchasing Card Program" or "program" means the purchase of and payment for Transactions which do not exceed the Transaction Limit through use of the Purchasing Card.

2.16. "Statewide Contract" means a legally binding instrument competitively bid, awarded and maintained by the Purchasing Division to provide services or tangible goods to all state spending units at a specified price. Statewide contract usage is mandatory for all agencies under the jurisdiction of the Purchasing Division and available (upon mutual consent) to agencies not under the jurisdiction of the Purchasing Division.

2.17. "Transactions" means the purchase of and payment for:

2.17.a. Goods the cost of which do not exceed the Transaction Limit;

2.17.b. Services as follows:

2.17.b.1. Maintenance;

2.17.b.2. Utilities---no Transaction Limit; and

2.17.b.3. Any other Services not exceeding the Transaction Limit which are not tax reportable.

2.17.c. Registration fees for institutions or for individuals where the fees are required for the performance of the employee's job; ~~and~~

2.17.d. Tuition for seminars, academic courses, or other education, continuing or otherwise as are required for the performance of an employee's job duties and authorized by law or Attorney General opinion.

2.17.e. Travel for Higher Education where the travel is required for the performance of the employee's job; provided that the purchasing card shall not be used to pay for the purchase of food or fuel costs associated with the travel; and

2.17.f. Routine, regularly scheduled payments of Higher Education which means all

payments which have either received Attorney General approval in accordance with statute or do not require such approval, and are made on a regular, predictable and routine basis whether weekly, monthly, annually, or on any other regular schedule. The routine, regularly scheduled payments are limited to the following: association dues; accreditation fees; software licenses and maintenance fees; resale merchandise; maintenance contracts; temporary space rentals; inter-library loan charges; inter/intra-institutional charges; contracts for artists, entertainers, and speakers; open end contracts; license fees of all types; utilities of all types; Federal, State and Municipal fees and assessments; real property rental fees; postage; books and related items, including those for libraries and bookstores; hospitality expenses; travel expenses; shipping, handling, and freight charges; advertising; subscriptions; periodicals, and publications; athletic and academic team related expenses; and necessary job related medical or drug testing and treatment.

2.18. "Transaction Limit" means the maximum dollar amount permitted in any single Transaction as follows:

2.18.a. For the period beginning July 1, 2000, the maximum dollar amount is \$2,500.00, except as provided in subdivisions 2.18.c, ~~and d,~~ and e of this subsection;

2.18.b. Cumulative purchases including maintenance not foreseen to exceed state purchasing or higher education guidelines are eligible for payment by the purchasing card;

2.18.c. For specified emergency cards, the transaction limit is \$25,000.00 in the event of a state of emergency as defined in Chapter 15 and WV Code 18B-5-9, the transaction limit is the credit limit associated with the card; and

2.18.d. For specified cards, the transaction limit may be \$5,000.00 for institutions of higher education; ~~and~~

2.18.e. For specified regular, routine payments of Higher Education as set forth in WV Code 18B-5-9, the transaction limit is the credit limit associated with the card.

2.19. "Utilities" means electricity, gas, heating oil, telephone, television cable, water, sewage, garbage collection, and similar services.

### §155-7-3. Applicability.

3.1. This legislative rule applies to all spending units of State government except those statutorily exempted. Exempted spending units may elect to follow the provisions of this rule.

3.2. In the event of a state or federally declared emergency, public necessity, rescue relief or disaster, the Governor or his or her designee may authorize the use of the purchasing card for use by emergency management or response personnel. Emergency management and response personnel may use the purchasing card for all transactions permitted by this rule as well as for travel, lodging, meals and the purchase of immediate goods and services following the applicable law or rule relating to the Purchasing Division: Provided, That the Governor or his or her designee shall provide to the Authorization Administrator a list containing the names of persons designated as emergency management and response personnel, and any other information required for the issuance of a state purchasing card; An emergency terminates thirty (30) days from the date of proclamation, unless previously extended or terminated by written proclamation by the governor: Provided, however, That use of the purchasing card is permitted only during the emergency, public necessity, rescue relief or disaster, to which the emergency management or response personnel are responding, and that upon the proclamation of the termination of the emergency, public necessity, rescue relief or disaster by the Governor, or the passage by the legislature of a concurrent resolution terminating such emergency, public necessity, rescue relief or disaster, the privilege of use terminates: Provided, further, that emergency management and response personnel have an additional thirty days after the termination of the emergency to pay invoices for goods and services rendered during the state of emergency.

3.3. In the event of an emergency effecting an institution of Higher Education, declared by the president of the institution and approved by the chancellor, the president or his or her designee may authorize the use of an emergency purchasing

card by a designated representative: Provided, That the president or his or her designee shall provide to the Authorization Administrator a list containing the names of designated emergency purchasers, and any other information required for the issuance of a state purchasing card. An emergency terminates thirty (30) days from the date of proclamation, unless previously extended or terminated by written proclamation signed by the president and approved by the chancellor: Provided, however, that use of the purchasing card is permitted only to pay for goods and services rendered during the emergency: Provided, further, that the institution shall have an additional thirty days after the termination of the emergency to pay for goods and services rendered during the emergency.

### §155-7-4. Power and Authority.

4.1. The Director may:

4.1.a. Allow card purchases of Transactions not exceeding Transaction Limits;

4.1.b. Establish the manner in which spending units may purchase supplies directly from the State's central storerooms or other spending units using the program;

4.1.c. Prohibit use of the card for cash advances;

4.1.d. Ensure goods and services purchased are received in advance of or simultaneously with use of the Purchasing Card;

4.1.e. Ensure cards are used for official state purchases only;

4.1.f. Review spending unit records of card purchases;

4.1.g. In joint effort with the Auditor, resolve questions and conflicts regarding procedural matters related to the implementation and administration of the card; questions that relate to significant policy changes require joint approval with the Auditor;

4.1.h. Revoke authority to use a card at any level of use if Director determines a spending unit is in violation of this rule;

4.1.i. In joint effort with the Auditor, draft letters and memorandum concerning purchasing card policies and procedures and changes in the program;

4.1.j. Maintain a current cardholder list;

4.1.k. In joint effort with the Auditor, coordinate contractual agreements between the Provider and the State of West Virginia;

4.1.l. Review and approve new card application forms and cardholder maintenance forms reflecting cancellations or other changes to cardholder information;

4.1.m. Maintain coordinator listing with the Auditor;

4.1.n. In joint effort with the Auditor, advise and train coordinators and cardholders in correct business usage of the card;

4.1.o. Authorize cardholder renewals;

4.1.p. Approve all limit changes for cardholders and spending units as requested by the coordinators;

4.1.q. In joint effort with the Auditor, research new applications for the Purchasing Card;

4.1.r. In joint effort with the Auditor, assist spending units with establishing purchasing card programs;

4.1.s. In joint effort with the Auditor, assist point of sale vendors who wish to participate in the purchasing card program; and

4.1.t. Direct the Purchasing Card Provider to restrict the Point of Sale Vendor from using the program when the restriction is in the best interest of the State.

4.2. The Auditor may:

4.2.a. Establish procedures for documenting, reconciling and paying invoices for card purchases;

4.2.b. Establish the manner of inspecting

all records and reconciling documents involving card purchases;

4.2.c. Establish the manner in which spending units document purchases and reconcile invoices prior to submission of the invoices to the Auditor for payment;

4.2.d. Approve the format of Purchasing Card Provider invoices;

4.2.e. In cooperation with the State Treasurer, assess and collect penalty fees against spending units for failing to use the card for Transactions that qualify for the program, and deposit the fees in the Technology Support and Acquisition Fund. The Auditor and Treasurer shall set the fee in a legislative rule;

4.2.f. In joint effort with the Director, market the program to spending units, the general public and other states and municipalities;

4.2.g. Receive cardholder maintenance forms reflecting cancellations or other changes to cardholder information; and

4.2.h. Monitor available credit by spending unit on a daily basis, and, when necessary, intervene with the Provider and/or spending unit to prevent a spending unit from exceeding the maximum credit level.

4.3. Purchasing Card Coordinators:

4.3.a. Each spending unit's procurement administrator or his or her designee shall serve as the spending unit Purchasing Card Coordinator and shall determine to whom cards will be issued based upon the purchasing authority of each individual.

4.3.b. Purchasing Card Coordinators may restrict usage of the card consistent with the needs of the spending unit.

#### **§155-7-5. Point of Sale Vendor Participation.**

5.1. Each Point of Sale Vendor desiring to participate in the program is solely responsible for contracting or enrolling with the Purchasing Card Provider under the terms and conditions set forth in the agreement between the Purchasing Division

and Purchasing Card Provider.

**§155-7-6. Purchasing Methods.**

6.1. The provisions of W. Va. Code §5A-3-1 et seq., and the Purchasing Division Purchasing Rules, 148 CSR 1, apply to purchases made with the card, except where exempt by statute.

6.2. The cards are to be used in the State's best interest.

6.3. The card may be used as a payment method for releases (orders) against statewide contracts, in accordance with the transaction limit as set forth in subsection 2.18 of this rule, excluding those requiring advance approval of the Purchasing Division. There is no annual limit for payments against statewide contracts.

6.4. With the written approval of the Auditor and the Director to the department head or chief fiscal officer of an agency, an agency may use the card as a payment method on agency open-ended contracts.

**§155-7-7. Itemizing Claims for Payment.**

7.1. A spending unit is not required to submit individual itemized vendor invoices for purchases made with the card that do not exceed the Transaction Limit.

7.2. The Purchasing Card Provider shall provide a consolidated multiple vendor invoice to the spending officer of each spending unit, as required by the Auditor. A spending officer may consolidate payments into one monthly payment to the Purchasing Card Provider. Each spending unit may require changes in the format of invoices to meet its needs, with the approval of the Auditor.

**§155-7-8. Violations.**

8.1. Any person who authorizes or approves a purchase or contract payment in a manner in violation of this rule or the West Virginia Code is guilty of a felony, pursuant to W. Va. Code §12-3-10b.