

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**
Form #7

Do Not Mark In This Box
Filing Date

FILED

2001 AUG 29 P 4:00

OFFICE WEST VIRGINIA
SECRETARY OF STATE
Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: Office of State ~~Affair~~ Administration TITLE NUMBER: 148

CITE AUTHORITY: WV Code 12-3-10a

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

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

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

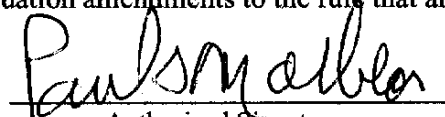
TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

The proposed emergency amendments to this rule will comply with SB 703 by bringing the rule into conformity with the State Law. The other proposed amendments include a revision to subdivision 2.18.d that allows for a transaction limit of \$5,000 for higher education. The Auditor's Office is proposing that this limit be raised because higher education's purchasing guidelines do not require bids until \$5,000 is reached. There are also a few minor grammatical/punctuation amendments to the rule that are proposed.

Use additional sheets if necessary


Authorized Signature



State of West Virginia

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

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Glen B. Gainer III
State Auditor

August 29, 2001

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

RE: 148CSR7 - "State Purchasing Card Program"

Dear Ms. Cooper:

This letter will serve as my approval to file the above-referenced Emergency Legislative rule with your office as "Notice of an Emergency Rule." These proposed emergency amendments will bring 148CSR7 into conformity with State law as mandated in SB 703.

If you should have any questions concerning this filing, or require additional information, please feel free to call me at 558-2251, ext. 113.

Sincerely,

A handwritten signature in cursive script that reads "Paul S. Mollohan".

Paul S. Mollohan
Senior Deputy State Auditor

PSM:cc

cc: Robin Righter



EMERGENCY RULE QUESTIONNAIRE

DATE: August 29, 2001

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* WV State Auditor's Office, Capitol Complex, Building 1

Room W-100, Charleston, West Virginia 25305 Phone 558-2251

EMERGENCY RULE TITLE: "State Purchasing Card Program"

1. Date of filing August 29, 2001

2. Statutory authority for promulgating emergency rule:

12-2-10(a) and 29A-3-15

3. Date of filing of proposed legislative rule: August 29, 2001

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? Amends current language

5. Has the same or similar emergency rule previously been filed and expired?

No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.

SB 703, §18B-5-4(a)(5) passed April 14, 2001, effective July 1, 2001 states "shall advertise for bids on all purchases exceeding twenty-five thousand dollars, to purchase by means of sealed bids and competitive bidding . . ." The Purchasing Card rule currently states all purchases exceeding fifteen thousand dollars. Therefore, 148CSR7 is in conflict with state law.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

N/A

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

This emergency amendment will conform with the provisions of SB 703 passed during the 2001 Legislative Session.

148CSR7 - "State Purchasing Card Program"

BRIEF SUMMARY OF PROPOSED EMERGENCY RULE

148CSR7 explains and clarifies the 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.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE EMERGENCY RULE

The proposed emergency amendments to this rule will comply with SB 703 by bringing the rule into conformity with State Law.

The other proposed amendments include a revision to subdivision 2.18.d that allows for a transaction limit of \$5000 for higher education. The Auditor's Office is proposing that this limit be raised because higher education's purchasing guidelines do not require bids until \$5,000 is reached. There are also a few minor grammatical/punctuation amendments to the rule that are proposed.

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: "State Purchasing Card Program"

Type of Rule: X Legislative _____ Interpretive _____ Procedural

Agency: West Virginia State Auditor's Office

Address: Capitol Complex

Building 1, Room W-100

Charleston, West Virginia 25305

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	-0-	-0-	-0-	-0-	-0-
PERSONAL SERVICES	-0-				
CURRENT EXPENSE	-0-				
REPAIRS & ALTERATIONS	-0-				
EQUIPMENT	-0-				
OTHER	-0-				

2. Explanation of Above Estimates:

N/A

3. Objectives of These Rules:

The objective of these proposed amendments, among others, will bring 148CSR7 into conformity with state law as mandated in SB 703, passed April 14, 2001, effective July 1, 2001.

Rule Title: 148CSR7 - "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: August 29, 2001

Signature of Agency Head or Authorized Representative:

Paul M. Ollahan

TITLE 148
DEPARTMENT OF ADMINISTRATION
PURCHASING DIVISION AND STATE AUDITOR
EMERGENCY
SERIES 7
STATE PURCHASING CARD PROGRAM

FILED

2001 AUG 29 P 4:00

OFFICE WEST VIRGINIA
SECRETARY OF STATE**§148-7-1. 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. -- ~~May 23, 2001.~~

1.4. Effective Date. -- ~~May 23, 2001.~~

§148-7-2. 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;—Annual Transaction Limit of \$15,000.00 for all colleges and universities and \$10,000.00 for all other spending units in accordance with state purchasing guidelines.

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. Association dues and

Registration fees for institutions or for individuals where the dues or 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.

2.18. "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 of this subsection;

2.18.b. Cumulative purchases including maintenance not forseen to exceed \$15,000.00 annually for all colleges and universities and \$10,000.00 annually for all other spending units in accordance with state purchasing or higher education guidelines are not eligible for purchase payment by the purchasing card; and

2.18.c. For specified cards, the transaction limit is \$25,000.00 in the event of a state of emergency as defined in Chapter 15 of the West Virginia Code; and

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

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

§148-7-3. 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 rules 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; 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.

§148-7-4. 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.

§148-7-5. 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.

§148-7-6. 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.

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 exception of orders against statewide contracts, the card cannot be used as a payment method for purchases forseen to exceed \$15,000.00 annually for all colleges and universities and \$10,000.00 annually for all other spending units in accordance with state purchasing guidelines.~~

~~6.5.~~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.

§148-7-7. 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.

§148-7-8. 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.