

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

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Filing Date

FILED

JUL 25 2 14 PM '96

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

9/5/96

NOTICE OF AN EMERGENCY RULE

State Auditor and Purchasing Administration
AGENCY: Division, Department of Administration TITLE NUMBER: 148

CITE AUTHORITY: §12-3-10a

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 7

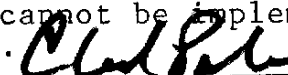
TITLE OF RULE BEING FILED AS AN EMERGENCY: State Purchasing Card

Program

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:

Failure to immediately implement this rule will cost tax payers at least \$6.65 million annually. The Code requires this rule be promulgated before the program can be implemented. Therefore, unless this emergency rule is authorized, the program cannot be implemented and the taxpayers will be substantially harmed.



Signature

Use additional sheets if necessary

EMERGENCY RULE

148 CSR 7

TITLE 148
DEPARTMENT OF ADMINISTRATION
PURCHASING DIVISION
and
STATE AUDITOR

SERIES 7
STATE PURCHASING CARD PROGRAM

APPROVAL OF FILING BY CABINET SECRETARY



Chuck Polan
Secretary
Department of Administration

DATE: July 24, 1996

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: State Auditor and Purchasing Division, Department of Administration

EMERGENCY RULE TITLE: State Purchasing Card Program

1. Date of Filing July 24, 1996

2. Statutory authority for promulgating emergency rule:
West Virginia Code §12-3-10a and §29-3-15 (g)

3. Date of filing of proposed legislative rule: July 24, 1996

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

Emergency rule adopts new 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.

N/A

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.

~~The State Auditor estimates implementation of the program will save taxpayers \$6,650,000 annually. The State Auditor and Director of the Purchasing are required to jointly propose rules to govern implementation of this program.~~

Therefore, unless this emergency rule is authorized, the program cannot be implemented and the taxpayers will be substantially harmed.

EMERGENCY RULE

148 CSR 7

**TITLE 148
DEPARTMENT OF ADMINISTRATION
PURCHASING DIVISION
and
STATE AUDITOR**

**SERIES 7
STATE PURCHASING CARD PROGRAM**

**BRIEF SUMMARY OF PROPOSED RULE
with
STATEMENT OF CIRCUMSTANCES CONSTITUTING EMERGENCY**

This Legislative Rule is an explanation and clarification of the procedures for the State Purchasing Card Program, authorized by West Virginia Code §12-3-10, §12-3-10a and §12-3-10b. The program provides an efficient and alternative process for the purchase of and payment for goods and services which do not exceed \$500.00. The program will provide prompt payment to vendors through consolidated multiple vendor invoices and expedite receipt of small purchases through use of a Purchasing Card.

The State Auditor estimates implementation of this program will save taxpayers at least \$6,650,000 annually. Failure to immediately implement this rule will unnecessarily cost the taxpayers \$6,650,000 annually. West Virginia Code §12-3-10a requires the State Auditor and the Director of the Purchasing Division to jointly propose rules to govern the implementation of this program. Therefore, unless this emergency rule is authorized, the program cannot be implemented and the taxpayers will be substantially harmed.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: State Purchasing Card Program

Type of Rule: X Legislative Interpretive Procedural

Agency: Department of Administration

Address: Main Capitol, Room E-119
1900 Kanawha Boulevard, East, Charleston, WV 25305
Contact: Diana Stout (304) 558-4331

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$	\$ 6.65mm	\$ 6.65mm	\$ 6.65mm	\$ 6.65mm
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

The State Auditor estimates he processes 300,000 invoices per year eligible for this program. Assuming State government costs are one-half of the lowest private enterprise, which is probably a major understatement of the true costs, costs for processing purchases through the ordering and payment process would be \$22.50 each. Costs monitoring the program is expected to be \$100,000 annually.

3. Objectives of these rules:

To provide an explanation and clarification of the procedures for the Purchasing Card Program.

Rule Title: State Purchasing Card Program

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

This is expected to save at least \$6,650,000 annually.

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

None.

C. Economic Impact on Citizens/Public at Large.

This rule is expected to save \$6,650,000 annually.

Date: July 25, 1996

Signature of Agency Head or Authorized Representative

Carl P. ...

EMERGENCY RULE

148 CSR 7

**TITLE 148
DEPARTMENT OF ADMINISTRATION
PURCHASING DIVISION
and
STATE AUDITOR**

**SERIES 7
STATE PURCHASING CARD PROGRAM**

§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 amount specified in West Virginia Code §12-3-10a.

1.2. Authority. - See West Virginia Code §12-3-10a.

1.3. Filing Date. - _____, 1996.

1.4. Effective Date. - _____, 1996.

§148-7-2. Definitions.

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

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

2.3. "Goods" means commodities, supplies, material, printing, equipment, and any other articles or items used by or furnished to a department, agency or institution of state government.

2.4. "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.

2.5. "Purchasing Card" or "Card" means the charge card authorized by the Director to provide payment for goods and services under this rule.

2.6. "Purchasing Card Administrator" means the individual designated by the Director of the Purchasing Division to coordinate the State Purchasing Card Program.

2.7. "Purchasing Card Coordinator" or "Coordinator" means the individual designated by the spending officer of a spending unit to coordinate the State Purchasing Card Program.

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

2.9. "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.

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

2.11. "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.

§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 this rule.

§148-7-4. Power and Authority.

4.1. The Director has the power and authority to:

(a) Allow card purchases of goods where each transaction does not exceed the amount specified in §12-3-10a;

(b) Allow card purchases of services where each transaction does not exceed the amount specified in §12-3-10a, if authorized by both the Auditor and Director;

(c) Establish the manner in which spending units may purchase supplies directly from the State's central storerooms or other spending units using the State Purchasing Card Program;

(d) Prohibit use of the Purchasing Card for cash advances;

(e) Ensure goods and services purchased are received in advance of or simultaneously with use of the Purchasing Card;

(f) Ensure cards are used for official state purchases only;

(g) Review spending unit records of Purchasing Card purchases;

(h) Resolve questions and conflicts regarding contractual and procedural matters related to the implementation and administration of the State Purchasing Card Program; and

(i) Revoke authority to use a Purchasing Card at any level of use if the Director determines a spending unit is in violation of this rule.

4.2. The Auditor has the power and authority to:

(a) Establish procedures for documenting, reconciling and paying invoices for Card purchases;

(b) Establish the manner of inspecting all records and reconciling documents involving Card purchases;

(c) Establish the manner in which spending units document purchases and reconcile invoices prior to submission to

the Auditor for payment;

(d) Approve the format of Purchasing Card Provider invoices; and

(e) Receive and deposit to the credit of the general revenue fund all rebates and other revenue generated by the program.

4.3. The Purchasing Card Administrator has the authority to direct the Purchasing Card Provider to restrict the Point of Sale Vendor from using the Purchasing Card Program when in the best interest of the State.

4.4. Purchasing Card Coordinators

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

(b) Purchasing Card Coordinators may restrict usage of the purchasing 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 State Purchasing Card Program is solely responsible for contracting or enrolling with the State's Purchasing Card Provider under the terms and conditions set forth in the Purchasing Card Services Agreement between the West Virginia Purchasing Division and Purchasing Card Provider.

§148-7-6. Purchasing Methods.

6.1. The provisions of West Virginia Code §5A-3-1 et seq., the Purchasing Rules, 148 CSR 1, and the Department of Tax and Revenue Preference for Determining Successful Bids Rule, 110 CSR 12C, shall apply to purchases using the Purchasing Card.

6.2. Purchasing Cards are to be used in the State's best interest for purchases of goods and services with a per transaction limit as set by the West Virginia Code §12-3-10a.

6.3. The Purchasing Card may be used as a payment method for releases (orders) against statewide contracts, blanket orders and price agreements.

§148-7-7. Itemizing Claims for Payment.

7.1. The requirement for individual itemized vendor invoices for purchases which do not exceed \$500.00 is eliminated where the State Purchasing Card Program is utilized.

7.2. The Purchasing Card Provider will 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 the West Virginia Code is guilty of a felony, pursuant to West Virginia Code §12-3-10b.



KEN HECHLER
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Supervisor, Corporations

(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA
SECRETARY OF STATE
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

September 4, 1996

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Department of Administration

RULE: New Rule, Series 7, State Purchasing Card Program

DATE FILED AS AN EMERGENCY RULE: July 25, 1996

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SEP 5 10 42 AM '96

FILED

DECISION NO. 15-96

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule is **approved**. A copy of the complete decision with required findings is available from this office.


KEN HECHLER
Secretary of State

program shall be conducted so that procedures and controls for the procurement and payment of goods and services are made more efficient. The program shall permit spending units to use a purchase charge card to purchase goods and services. The amount of any one purchase made with the purchase charge card shall not exceed five hundred dollars: Provided, That purchasing cards may not be utilized for the purpose of obtaining cash advances, whether the advances are made in cash or by other negotiable instrument. Purchases of goods and services must be received either in advance of or simultaneously with the use of a state purchasing card for payment for those goods or services. The auditor, by legislative rule, may eliminate the requirement for vendor invoices and provide a procedure for consolidating multiple vendor payments into one monthly payment to a charge card vendor. Selection of a charge card vendor to provide state purchasing cards shall be accomplished by competitive bid. The purchasing division of the department of administration shall contract with the successful bidder for provision of state purchase charge cards. Purchase charge cards issued under the program shall be used for official state purchases only. The auditor and the director of the purchasing division of the department of administration shall jointly propose rules for promulgation in accordance with the provisions of §29A-3-1 of this code to govern the implementation of the purchase card program.

par. 9 It is the determination of the Secretary of State that the Department has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- WV Code 29A-3-15(f) defines "emergency" as follows:

(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Department are as follows:

Failure to immediately implement this rule will cost tax payers at least \$6.65 million annually. The Code requires this rule be promulgated before the program can be implemented. Therefore, unless this emergency rule is authorized, the program cannot be implemented and the taxpayers will be substantially harmed.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . substantial harm to the taxpayers.

par. 14

This decision shall be cited as Emergency Rule Decision 15-96 or ERD 15-96 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Department of Administration, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

Entered _____

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SEP 5 10 42 AM '96

FILED