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KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #4

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: STATE AUDITOR'S OFFICE & PURCHASING DIVISION- DEPARTMENT OF ADMINISTRATION TITLE NUMBER: 148

CITE AUTHORITY §12-3-10a

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 NEW RULE BEING PROPOSED: 7

TITLE OF RULE BEING PROPOSED: STATE PURCHASING CARD PROGRAM

THE ABOVE PROPOSED LEGISLATIVE RULE, 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

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 \$500.00.

1.2. Authority. - 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 spending unit.

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.

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

2.7. "Purchasing Card Coordinator" or "Coordinator" means the individual designated by the spending officer 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.

2.12. "State Purchasing Card Program" or "program" means the purchase of and payment for goods and services in transactions which do not exceed \$500.00 through use of the Purchasing Card.

§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.

§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 \$500.00;

(b) Allow card purchases of services where each transaction does not exceed \$500.00, 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 program;

(d) Prohibit use of the 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 card purchases;

(h) Resolve questions and conflicts regarding contractual and procedural matters related to the implementation and administration of the card; 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 of

the invoices 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 program when the restriction is in the best interest of the State.

4.4. Purchasing Card Coordinators

(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.

(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 West Virginia Code §5A-3-1 et seq., the Purchasing Division 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 made with the card.

6.2. The cards are to be used in the State's best interest for purchases of goods and services with a per transaction limit of

\$500.00.

6.3. The 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. A spending unit is not required to submit individual itemized vendor invoices for purchases made with the card that do not exceed \$500.00.

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 West Virginia Code §12-3-10b.

Senate Bill No. 217

(By Senator(s) Ross, Anderson, Macnaughtan,
Boley and Buckalew)

[Introduced March 3, 1997; referred to the
Committee on Government Organization; and then
to the Committee on the Judiciary.]

10 A BILL to amend article two, chapter sixty-four of the code
11 of West Virginia, one thousand nine hundred
12 thirty-one, as amended, by adding thereto a new
13 section, designated section three, relating to
14 authorizing the department of administration and the
15 auditor to promulgate a legislative rule relating to
16 the state purchasing card program.

17 *Be it enacted by the Legislature of West Virginia:*

18 That article two, chapter sixty-four of the code of
19 West Virginia, one thousand nine hundred thirty-one, as
20 amended, be amended by adding thereto a new section,
21 designated section three, to read as follows:

22 **ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRATION**
23 **TO PROMULGATE LEGISLATIVE RULES.**

1 §64-2-3. Department of administration and the auditor.

2 The legislative rule filed in the state register on
3 the thirtieth day of August, one thousand nine hundred
4 ninety-six, under the authority of section ten-a, article
5 three, chapter twelve, of this code, modified by the
6 department of administration and the auditor to meet the
7 objections of the legislative rule-making review committee
8 and refiled in the state register on the sixth day of
9 February, one thousand nine hundred ninety-seven, relating
10 to the department of administration and the auditor (state
11 purchasing card program, 148 CSR 7), is authorized.

12

13 NOTE: The purpose of this bill is to authorize the
14 Department of Administration and the Auditor to promulgate
15 a legislative rule relating to the State Purchasing Card
16 Program.

17

18 This section is new; therefore, strike-throughs and
19 underscoring have been omitted.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: State Auditor and Department of Administration

Subject: State Purchasing Card Program, 148CSR7

PERTINENT DATES

Filed for public comment: July 25, 1996

Public comment period ended: August 28, 1996

Filed following public comment period: August 30, 1996

Filed LRMRC: August 30, 1996

Filed as emergency: July 25, 1996

Fiscal Impact: Decrease in cost of \$6.65 million annually

ABSTRACT

The proposed rule is new. The following is a section by section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 defines terms.

Section 3 states that the rule applies to all spending units of state government unless they are specifically exempt by statute. Exempt spending units may elect to follow the provisions of the rule.

Section 4 sets forth separately the powers and authority of the Director, the Auditor, the Purchasing Card Administrator and the Purchasing Card Coordinators.

Section 5 states that point of sale vendors are solely responsible for initiating participation in the Program under the terms of the Purchasing Card Services Agreement between the Purchasing Division and the Card Provider.

Section 6 provides that purchasing methods set forth in WVC 5A-3-1 et seq., and rules of the Purchasing Division and the Department of Tax and Revenue apply to the Purchase Card.

Section 7 eliminates the requirement for individual vendor invoices under the Purchasing Card Program. It also requires the Purchasing Card Provider to provide a consolidated multiple vendor

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invoice to each spending officer. A spending officer may consolidate payments into one monthly payment to the Card Provider.

Section 8 provides, as does the statute, that use of a purchasing card in violation of the statute or the rule is a felony.

AUTHORITY

Statutory authority: W.Va. Code, §12-3-10a, which provides, in part, as follows:

...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 article three, chapter twenty-nine-a of this code to govern the implementation of the purchase card program.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has several technical modifications to suggest.



FILED

Nov 22 10 41 AM '96

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

West Virginia Legislature
Legislative Rule-Making Review Committee

Room MB47-State Capitol
Charleston, West Virginia 25305
(304) 347-4840

Senator Mike Ross, Co-Chair
Delegate Vicki Douglas, Co-Chair

Debra A. Graham, Counsel
Joe Altizer, Associate Counsel
Marie Hickerson, Adm. Assistant

November 20, 1996

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register
TO: Ms. Crystal Moody
State Auditor and Purchasing Division of the Dept. of Administration
Bldg. 1, Room E-119
State Capitol
FROM: Legislative Rule-Making Review Committee
PROPOSED RULE: State Purchasing Card Program

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

- 1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency X
- 2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
- 3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
- 4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
- 5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. _____

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

L132

H. B. 2317

1 Bill-Admin & Aud, Purchasing

2

(By Delegate(s) Douglas, Hunt, Compton,
Faircloth, Linch and Riggs)

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[Introduced March 3, 1997; referred to the
Committee on the Judiciary.]

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