

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

FILED
Aug 3 5 01 PM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Dept. of Administration

AGENCY: West Virginia TITLE NUMBER: 148

CITE AUTHORITY 12-3-10a

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 7

TITLE OF RULE BEING AMENDED: ¹⁴⁸ State Purchasing Card Program

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

[Signature]

\$5.60

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: 03 August 1998

TO: **LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

FROM: (Agency Name, Address & Phone No.) Office of the State Auditor
Building 1, Room W-100, 1900 Kanawha Boulevard, East
Charleston, WV 25305 304/558-2251

LEGISLATIVE RULE TITLE: 148 (State Purchasing Card Program)

1. Authorizing statute(s) citation Section 12-3-10a Purchasing Card Program

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
02 July 1998

b. What other notice, including advertising, did you give of the hearing?
N/A

c. Date of Public Hearing(s) or Public Comment Period ended:
03 August 1998, 5 pm Public Comment Perios

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments. N/A

Attached _____ No comments received X

- e. **Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)**

03 August 1998

- f. **Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (Please type)**

Glen B. Gainer III, State Auditor, Building 1, Room W-100,

1900 Kanawha Boulevard, East, Charleston, WV 25305

Phone: 304/558-2251 Fax: 304/558-5200 E-Mail: glen_gainer@wvauditor.com

- g. **IF DIFFERENT FROM ITEM 'f', please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)**

Barbara Harmon-Schamberger, General Counsel, Building 1, Room W-110

1900 Kanawha Boulevard, East, Charleston, WV 25305

Phone: 304/558-2257 Fax: 304/558-4211 E-Mail: bschamberger@wvauditor.com

3. **If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:**

- a. **Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.**

N/A

b. **Date of hearing or comment period:**

July 2, 1998 - August 3, 1998

c. **On what date did you file in the State Register the findings and determinations required together with the reasons therefor?**

N/A

d. **Attach findings and determinations and reasons:**

Attached N/A

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 148, State Purchasing Card Program

Type of Rule: **Legislative** **Interpretive** **Procedural**

Agency: Office of the State Auditor Glen B. Gainer III

Address: Building 1, Room W-100
 1900 Kanawha Boulevard, East
 Charleston, WV 25305

1. Effect of Proposed Rule

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

2. Explanation of above estimates:

Not Applicable.

3. Objectives of these rules:

To expand the use of the State Purchasing Card; reduce expenditures on purchasing transactions; better comply with the Prompt Payments Act; and, implement changes mandated by the 1998 Regular Session to Section 12-3-10a of the Code of West Virginia.

4. **Explanation of Overall Economic Impact of Proposed Rule.**

A. **Economic Impact on State Government.**

Will enable the state to save money and time in the process and paying of all approved transactions. Will also decrease the State's financial liability under the Prompt Payment Act by avoiding late payment of invoices.

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

Participating agencies will be able to decrease paperwork and focus on public services by using the purchasing card for approved purchases. Transaction fees, as called for in statute, are comparable to transaction costs currently borne by agencies utilizing state purchasing procedures.

There is no anticipated negative impact upon any other political subdivisions.

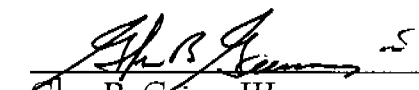
There is no anticipated negative impact upon any specific groups of citizens; however, State residents who are vendors will see quicker payment for approved goods and services that are purchased with the purchasing card.

C. **Economic Impact On Citizens/Public At Large.**

Prompt payment of approved goods and services purchased by the State of West Virginia is good business. It will reduce costs incurred for late payment, thereby relieving a burden upon the public fisc. Importantly, prompt payment for the rendering of approved goods and services will also positively impact the State's credit rating, thereby enabling West Virginia to acquire credit at a lower cost to taxpayers.

Date: _____

Signature of Agency Head or Authorized Representative



Glen B. Gainer III
State Auditor

QUESTIONNAIRE

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DATE: 01 July 1998

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FROM: (Agency Name, Address & Phone No.) Office of the State Auditor

Building 1, Room W-100, 1900 Kanawha Boulevard, East

Charleston, WV 25305 304/558-2251

LEGISLATIVE RULE TITLE: 148 (State Purchasing Card Program)

1. **Authorizing statute(s) citation** Section 12-3-10a Purchasing Card Program

2. a. **Date filed in State Register with Notice of Hearing or Public Comment Period:**
02 July 1998

b. **What other notice, including advertising, did you give of the hearing?**
N/A

c. **Date of Public Hearing(s) or Public Comment Period ended:**
03 August 1998

d. **Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.** N/A
Attached _____ **No comments received** _____

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

N/A

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (Please type)

Glen B. Gainer III, State Auditor, Building 1, Room W-100,

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- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. **Date of hearing or comment period:**

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c. **On what date did you file in the State Register the findings and determinations required together with the reasons therefor?**

d. **Attach findings and determinations and reasons:**

Attached

Statement of Purpose

The purpose of the proposed amendments to this rule are as follows:

(1) These amendments will enable the state auditor to comply with legislatively mandated changes to the state purchasing card program, pursuant to §12-3-10a of the Code of West Virginia, as amended in the 1998 Regular Session of the West Virginia Legislature. The legislative changes enabled the State Auditor to develop rules, in cooperation with the Department of Administration, for the expansion and use of the state purchasing card program.

(2) These amendments will also enable the designated agency to expand the use of the State Purchasing Card to enable the state of West Virginia to reduce expenditures on purchasing transactions and better comply with the Prompt Payments Act.

(3) Additionally, these amendments require the State Auditor to appoint the Administrator of the state purchasing card program.

(4) Moreover, these amendments will enable the Governor to better respond to demands placed upon him or her in times of crisis by enabling the Governor to authorize certain individuals to use the purchasing card during times of state or federally declared emergency, public necessity, rescue relief or disaster.

Statement of Circumstances

The state purchasing card program was legislatively created in order to reduce both the cost of payments processing paperwork and improve the state's payment times to vendors. Since the inception of the state purchasing card program, the legislature has also adopted the Prompt Payment Act that requires payments to vendors be completed and delivered within 30 days of receipt. The use of the state purchasing card has enabled agencies adopting the use of the card to dramatically improve their performance under the prompt payment act, reduce the cost of processing small dollar transactions, and make the state a more reliable purchaser of goods and approved services.

The purchasing card program, however, has had some difficulty in being widely disseminated because of the extensive and important duties carried out by the Department of Administration, which originally was assigned the administrative duties for the program's administration. The Department of Administration, while receiving the fees from the program, has been unable to dedicate enough available personnel to make the program a growing success. The State Auditor, however, working successfully with the Department of Administration, has dramatically expanded the purchasing card's use and greatly publicized the savings of time and money to not only state agencies but to taxpayers who will not have to foot the bill for late payments, and to vendors who's businesses depend upon prompt payment of goods.

These rules will enable the purchasing card program to have continued and greater success both in adoption and use. These amendments will enable the purchasing card to be used during state

emergencies (for approved goods and services) so that a better documentary record can be preserved and thereby reimbursed by federal or other funds where applicable, rather than have an ad hoc process under which receipts and other documentation can be scattered or even lost.

Amending these rules will meet not only the demands of the legislative intent—to reduce the cost of government doing business and improve its record as a good business partner—but will meet the demands of West Virginia's future and participation in electronic commerce and communication.

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TITLE 148
DEPARTMENT OF ADMINISTRATION
PURCHASING DIVISION AND STATE AUDITOR

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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 Transaction Limit.

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

1.3. Filing Date. -- July 2, 1998.

1.4. Effective Date. –

§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. “emergency management or response personnel” shall mean 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, as per requirements of this rule.

~~2.3.~~ 2.4. “Goods” means commodities, supplies, materials, printing, equipment, and any other articles or items used by or furnished to a spending unit.

~~2.4.~~ 2.5. “Maintenance” means services to maintain an item of equipment or computer software, including parts incidental to providing the service.

~~2.5.~~ 2.6. "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.

~~2.6.~~ 2.7. "Purchasing card" or "card" means the charge card authorized by the Director to provide payment for Transactions.

~~2.7.~~ 2.8. "Purchasing Card Administrator" or "Administrator" means the individual designated by the ~~Director~~ State Auditor to coordinate the Purchasing Card Program.

~~2.8.~~ 2.9. "Purchasing Card Coordinator" or "Coordinator" means the individual designated by the spending officer to coordinate the State Purchasing Card Program.

~~2.9.~~ 2.10. "Purchasing Card Provider" or "Provider" means the entity providing the State with Purchasing Card services.

~~2.10.~~ 2.11. "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.

~~2.11.~~ 2.12. "Spending officer" means the executive head of a spending unit, or a person designated by him or her.

~~2.12.~~ 2.13. "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.

~~2.13.~~ 2.14. "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.

~~2.14.~~ 2.15. "Transactions" means the purchase of and payment for:

- (a) Goods the cost of which do not exceed the Transaction Limit;
- (b) Services as follows:
 - (i) Maintenance---no Transaction Limit;
 - (ii) Utilities---no Transaction Limit; and

(iii) Any other Services not exceeding the Transaction Limit which are not tax reportable.

(c) association dues and registration fees for institutions or for individuals where such is required for the performance of the employee's job.

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

~~2.15.~~ 2.16. "Transaction Limit" means the maximum dollar amount permitted in any single Transaction as follows:

(a) For the period ending June 30, 1998, the maximum dollar amount is \$500.00, except for maintenance and utilities which are unlimited; and

(b) For the period beginning July 1, 1998, the maximum dollar amount is \$1,000.00, except for maintenance, and utilities and purchases from existing statewide purchasing agreements which are unlimited.

~~2.16.~~ 2.17. "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 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 these regulations as well as for travel, lodging, meals and the purchase of immediate goods and services that would otherwise be covered by state contract. Provided: That the governor shall provide to the Administrator of the Purchasing Card Program a list containing the names of persons designated as emergency management and response personnel, and such other information as is 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 such emergency management or response personnel are responding, and that upon cessation of the emergency, public necessity, rescue relief or disaster, the privilege of use shall terminate; Provided, further, that upon termination of the emergency, public necessity, rescue relief or disaster, the

Administrator shall make provision for either the destruction of or the return of all terminated purchasing cards.

§148-7-4. Power and Authority.

4.1. The ~~Director~~ Administrator may:

- (a) Allow card purchases of Transactions not exceeding Transaction Limits;
- (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;
- (c) Prohibit use of the card for cash advances;
- (d) Ensure goods and services purchased are received in advance of or simultaneously with use of the Purchasing Card;
- (e) Ensure cards are used for official state purchases only;
- (f) Review spending unit records of card purchases;
- (g) Resolve questions and conflicts regarding contractual and procedural matters related to the implementation and administration of the card;
- (h) Revoke authority to use a card at any level of use if the ~~Director~~ Administrator determines a spending unit is in violation of this rule; and
- (i) Administer the Purchasing Card Administration Fund.

4.2. The Auditor may:

- (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) 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.

4.3. 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 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, 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 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 change in the format of invoices to meet its needs, with the approval of the Auditor.

§148-7-8. Violations.

8.1. Any person who authorized 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.



State of West Virginia

Glen B. Gainer III
State Auditor
Barbara Harmon-Schamberger
General Counsel

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

Telephone: (304) 558-2251
FAX: (304) 558-5200
Internet: <http://www.wvauditor.com>

4 August 1998

The Hon. Ken Hechler,
Secretary of State
Building One, Room
1900 Kanawha Blvd. East
Charleston, WV 25305

Dear Secretary Hechler:

As General Counsel to State Auditor, Glen B. Gainer, III, I write to you to memorialize Auditor Gainer's approval of the filing of Department of Administration Rule 148-7, State Purchasing Card Program. Auditor Gainer gives his approval, however, with reservation to approach the Legislative Rule Making Review Committee should any matters relating to this rule come to his attention after his approval has been given. Auditor Gainer has taken this step because these rules cover budget and expenditure matters and therefore Auditor Gainer endeavors to incorporate the views of citizens, experts, vendors and others affected thereby and who seek a Legislative audience.

Thank you for your assistance and direction in this matter. If you have any questions regarding this or any other matter, please do not hesitate to contact me at the above referenced address.

Sincerely,

Barbara Harmon-Schamberger
General Counsel

cc: Glen B. Gainer, III

OFFICE OF THE
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