

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Purchasing Division and State Auditor 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, 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.



\$3.60

148CSR7

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Oct 29 11 33 AM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

~~2.2.~~ 2.3. "Director" means the Director of the Purchasing Division of the Department of Administration.

~~2.3.~~ ~~2.4.~~ "Emergency management or response personnel" ~~shall~~ 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, as **per requirements** set forth in subsection 3.2 of this rule.

~~2.3.~~ ~~2.4.~~ 2.5. "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.~~ 2.6. "Maintenance" means services to maintain an item of equipment or computer software, including parts incidental to providing the service.

~~2.5.~~ ~~2.6.~~ 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.

~~2.6.~~ ~~2.7.~~ 2.8. "Purchasing card" or "card" means the charge card authorized by the Director to provide payment for Transactions.

~~2.7.~~ ~~2.8.~~ 2.9. "Purchasing Card Authorization Administrator" or "Authorization Administrator" means the individual designated by the Director ~~State Auditor~~ Director to coordinate the Purchasing Card Program.

~~2.8.~~ ~~2.9.~~ 2.10. "Purchasing Card Coordinator" or "Coordinator" means the individual designated by the spending officer to coordinate the State Purchasing Card Program.

~~2.9.~~ ~~2.10.~~ 2.11. "Purchasing Card Provider" or "Provider" means the entity providing the State with Purchasing Card services.

~~2.10.~~ ~~2.11.~~ 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.

~~2.11.~~ ~~2.12.~~ 2.13. "Spending officer" means the executive head of a spending unit, or a person designated by him or her.

~~2.12.~~ ~~2.13.~~ 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.

~~2.13.~~ ~~2.14.~~ 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.

~~2.14.~~ ~~2.15.~~ 2.16. "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~~; 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.
- (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~~ the dues or fees are required for the performance of the employee's job; and

(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.~~ 2.17. "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, which cannot 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, and utilities ~~and purchases from existing statewide purchasing agreements~~ which are unlimited and \$25,000.00 for the use of the purchasing card in the event of a federally declared emergency, public necessity, rescue relief or disaster by emergency management or response personnel as authorized by the Governor or his or her designee.

~~2.16. 2.17.~~ 2.18. "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 these regulations this rule as well as for travel, lodging, meals and the purchase of immediate goods and services that would otherwise be covered by state contract 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 of the Purchasing Card Program a list containing the names of persons designated as emergency management and response personnel, and such any 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 the emergency management or response personnel are responding, and that upon ~~cessation of the emergency, public necessity, rescue relief or disaster,~~ 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 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~~ Director 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) In joint effort with the Auditor, resolve questions and conflicts regarding ~~contractual and~~ procedural matters related to the implementation and administration of the card; questions that relate to significant policy changes require joint approval with the Auditor;
- (h) Revoke authority to use a card at any level of use if the Director ~~Administrator~~ Director determines a spending unit is in violation of this rule; ~~and~~

~~(i) Administer the Purchasing Card Administration Fund.~~

- (i) In joint effort with the Auditor, draft letters and memorandum concerning purchasing card policies and procedures and changes in the program;
- (j) Maintain a current cardholder list;
- (k) In joint effort with the Auditor, coordinate contractual agreements between the Provider and the State of West Virginia;
- (l) Review and approve new card application forms and cardholder maintenance forms reflecting cancellations or other changes to cardholder information;
- (m) Maintain coordinator listing with the Auditor;
- (n) In joint effort with the Auditor, advise and train coordinators and cardholders in correct business usage of the card;
- (o) Authorize cardholder renewals;
- (p) Approve all limit changes for cardholders and spending units as requested by the coordinators;
- (q) In joint effort with the Auditor, research new applications for the Purchasing Card;
- (r) In joint effort with the Auditor, assist spending units with establishing purchasing card programs;
- (s) In joint effort with the Auditor, assist point of sale vendors who wish to participate in the purchasing card program; and
- (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:

- (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;
- (f) In joint effort with the Director, market the program to spending units, the general public and other states and municipalities;
- (g) Receive cardholder maintenance forms reflecting cancellations or other changes to cardholder information; and
- (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. 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.~~ 4.3. 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 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.



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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

*State Capitol - Room MB-49
Charleston, West Virginia 25305
(304) 347-4840*

*Senator Mike Ross, Co-Chairman
Delegate Mark Hunt, Co-Chairman
Debra A. Graham, Counsel*

*Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Teri Anderson, Administrative Assistant*

October 19, 1998

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register
TO: Glen B. Gainer, III
State Auditor
Capitol Complex
Building 1, Room W-100
FROM: Legislative Rule-Making Review Committee
Proposed Rule: **State Purchasing Card Program, 148CSR7**

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
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.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: West Virginia State Auditor

Subject: State Purchasing Card Program, 148CSR7

PERTINENT DATES

Filed for public comment: July 2, 1998
Public comment period ended: August 3, 1998
Filed following public comment period: August 3, 1998
Filed LRMRC: August 3, 1998
Filed as emergency:

Fiscal Impact: None

ABSTRACT

The proposed rule amends a current legislative rule. The following is a synopsis of the substantive amendments.

Section 2 which defines terms, has been amended to include a definition for the term "Emergency Management or Response Personnel" and to provide for the appointment of the Administrator by the State Auditor rather than the Director. "Transactions" for which the card may be used have been expanded to include association dues, registration fees and tuition.

Section 3 has been amended to allow the Governor to authorize the use of a purchasing card by emergency management or response personnel during a state or federally declared emergency, public necessity, rescue relief or disaster.

Section 4 has been amended to transfer the powers and duties of the Director to the Administrator.

AUTHORITY

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

...The auditor, in cooperation with the secretary of the department of administration, may establish a state purchasing card program for the purpose of authorizing all spending units of state government to use a purchasing card as an alternative payment method when making small purchases... 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?

Possibly. WVC §12-3-10a authorizes the establishment of a state purchasing card program "...for the purpose of authorizing all spending units of state government to use a purchasing card...". Subsection 3.2 would allow emergency management and response personnel not affiliated with a spending unit to use the state purchasing card. This exceeds the agency's scope of authority. If the proposed rule contained provisions for the issuance of the cards by the Governor's Office through the Governor's Civil Contingency Fund it might be workable, but the cards must be tied to a spending unit and thus a source of funding.

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?

See I.

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

See I.

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 technical modifications to suggest.

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

1 (a) The legislative rule filed in the state register on the
2 third day of August, one thousand nine hundred ninety-
3 eight, under the authority of section ten-a, article three,
4 chapter twelve of this code, modified by the department of
5 administration and the auditor to meet the objections of
6 the legislative rule-making review committee and refiled
7 in the state register on the twenty-ninth day of October,
8 one thousand nine hundred ninety-eight, relating to the
9 department of administration and the auditor (state
10 purchasing card program, 148 CSR 7), is authorized, with
11 the amendments set forth below:

12 On page two after subsection 2.15 by adding a new
13 subsection 2.16 to read as follows:

14 2.16. "Statewide Contract" means a legally binding
15 instrument competitively bid, awarded and maintained by
16 the Purchasing Division to provide services or tangible
17 goods to all state spending units at a specified price.
18 Statewide contract usage is mandatory for all agencies
19 under the jurisdiction of the Purchasing Division and
20 available (upon mutual consent) to agencies not under the
21 jurisdiction of the Purchasing Division.;

22 On page three, subsection 2.17 by striking out the words
23 "except for maintenance which cannot" and inserting in
24 lieu thereof the words "except for purchases including
25 maintenance foreseen to";

26 On page seven, subsection 6.3 by striking out the words
27 "blanket orders and price agreements" and inserting in
28 lieu thereof the words "in accordance with the transaction
29 limit as set forth in subsection 2.18 of this rule, excluding
30 those requiring advance approval of the Purchasing
31 Division. There is no annual limit for payments against
32 state-wide contracts.";

33 And,

34 On page seven, after subsection 6.3 by adding a new
35 subsection 6.4 to read as follows:

36 6.4 With the exception of orders against statewide
37 contracts, the card cannot be used as a payment method
38 for purchases foreseen to exceed \$15,000 annually for all
39 colleges and universities and \$10,000 annually for all other
40 spending units in accordance with state purchasing
41 guidelines.

42 (b) The legislative rule filed in the office of the secretary
43 of state on the sixteenth day of February, one thousand
44 nine hundred ninety-nine, authorized under the authority
45 of section four, article three, chapter five-a, of this code,
46 relating to the department of administration (purchasing,
47 148 CSR 1), is authorized.