

Form #3

FILED

2013 JUL 26 PM 4:15

OFFICE WEST VIRGINIA
SECRETARY OF STATE


Authorized Signature

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: July 25, 2013

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Diana Stout, General Counsel
State Treasurer's Office, 1900 Kanawha Blvd., E., Bldg. 1,
Room E-145, Charleston, WV 25305
(304) 558-5000 diana.stout@wvsto.com

LEGISLATIVE RULE TITLE: 112 CSR 12 Procedures for Fees in Collections by Charge,
Credit or Debit Card or by Electronic Payment

1. Authorizing statute(s) citation §12-3A-6
2.
 - a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 24, 2013
 - b. What other notice, including advertising, did you give of the hearing?
Proposed Rules were posted on the Treasurer's Office website www.wvsto.com. Notices were sent to WV Banker's Association, Community Bankers of WV, Bowles Rice McDavid Graff & Love, the Governor's Office, Department of Revenue, Tax Division, Department of Administration, FARS and the State Auditor's Office.
 - c. Date of Public Hearing(s) *or* Public Comment Period ended:
Public Comment Period ended July 24, 2013 at 5:00 p.m.
 - d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X

No comments received

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

July 26, 2013

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

Diana Stout, General Counsel
West Virginia State Treasurer's Office
Bldg. 1, Room E-145
1900 Kanawha Blvd., E.
Charleston, WV 25305
Fax: (304) 341-7094
Ph: (304) 341-0745
Email: diana.stout@wvsto.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)

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:

N/A

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

112 CSR 12

Summary

Revisions being made to 112 CSR 12, Procedures for Fees in Collections by Charge, Credit or Debit Card or by Electronic Payment, are to update the rule to conform to the West Virginia Code and current practice, as well as to make technical corrections. Definitions are amended and the definition of card processor is deleted since the term is not used. The rule adds provisions that the Treasurer may grant an exemption when another entity may offer services that best meet the needs of the spending unit and that convenience fees must follow merchant rules of card networks.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE

W. Va. Code §12-3A-6(e) provides, "The State Treasurer shall propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this Code to implement the provisions of this section."

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 112 CSR 12 Procedures for Fees in Collections by Charge, Credit or Debit Card or by Electronic Payment

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: Treasurer's Office

Address: Bldg. 1, Room E-145
1900 Kanawha Blvd., E.
Charleston, WV 25305

Phone Number: (304) 558-5000 Email: diana.stout@wvsto.com

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

112 CSR 12 is being updated to conform to West Virginia Code and current practice, as well as make technical corrections. It is not anticipated to have any impact on costs and revenues of state government.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: 112 CSR 12 Procedures for Fees in Collections by Charge, Credit or Debit Card or by Electronic Payment

Rule Title: _____

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

N/A

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

N/A

Date: June 19, 2013

Signature of Agency Head or Authorized Representative

Daniel Stewart

FILED

TITLE 112
LEGISLATIVE RULE
STATE TREASURER'S OFFICE

2013 JUL 26 PM 4:15

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES 12
PROCEDURES FOR FEES IN COLLECTIONS
BY CHARGE, CREDIT OR DEBIT CARD OR BY ELECTRONIC PAYMENT

§112-12-1. General.

1.1. Scope. -- This rule establishes the procedures for authorizing and implementing fees by state spending units to cover the cost of collection of moneys by charge, credit or debit card or by electronic payment.

1.2. Authority. -- W. Va. Code § 12-3A-6.

1.3. Filing Date. ~~May 11, 2005~~ _____.

1.4. Effective Date. ~~June 1, 2005~~ _____.

§112-12-2. Definitions.

2.1. "ACH" means automated clearinghouse, a national EFT network which enables participating financial institutions to distribute electronic credit and debit entries to accounts and to settle the entries.

~~2.2. "Card Processor" means the entity that processes payments by charge, credit and debit cards from the merchant to the card issuer to the merchant's financial institution.~~

~~2.3~~2.2. "Card Issuer" means the financial institution issuing a charge, credit or debit card.

~~2.4~~2.3. "Card Payment Service Provider" means an entity that accepts payment by charge, credit or debit card or electronic payment on behalf of a spending unit.

~~2.5~~2.4. "Charge Card" means a card (usually plastic) issued for the purpose of obtaining money, property or services on credit, with the full balance due at the end of each statement period.

2-62.5. "Convenience Fee" means a fixed or variable rate charge assessed to a charge, credit or debit card or electronic payment to help defray the cost of processing a transaction.

2-72.6. "Credit Card" means a card (usually plastic) issued for the purpose of obtaining money, property or services on credit, with the full balance or minimum payments due at the end of each statement period. Interest is assessed on the unpaid balance.

2-82.7. "Customer" means any person or entity purchasing from a spending unit.

2-92.8. "Debit Card" means a card (~~usually plastic~~) issued for the purpose of obtaining money, property or services with the amount charged directly to the holder's financial institution account ~~electronically by electronic funds transfer~~.

2-102.9. "Discount Fee" means the charges assessed to the merchant on the total sale by charge, credit or debit card by a card issuer for accepting its card.

2-112.10. "Electronic Commerce" means the processing of transactions by electronic means, including, but not limited to, the telephone, IVR, POS terminal, internet and electronic payment.

2-122.11. "EFT" means electronic funds transfer.

2-132.12. "Electronic Payment" means an EFT, including, but not limited to, payment by ACH, ~~and ACH based electronic check~~ and wire transfer.

2-142.13. "Financial Institution" means any state-chartered banking institution, national banking institution, national banking association, federal savings and loan association, bank holding company, savings and loan holding company, federal savings bank, state-chartered credit union or federally-chartered credit union.

2-152.14. "Internet" means the computer-based global information system linking computer networks all over the world by satellite.

2-162.15. "IVR" means a telephone interactive voice response system.

2-172.16. "Merchant" means any state spending unit that accepts charge, credit or debit cards.

2-182.17. "Point of Sale Terminal" or "POS Terminal" means a financial institution communication device or equipment used for the primary purposes of transferring moneys to or from a financial institution account or segregating moneys in accounts within a financial institution, or both, for transactions, including, but not limited to,

devices and equipment used to implement and facilitate check guarantee and check authorization.

~~2-192.18.~~ "Spending Unit" means any entity of the West Virginia state government for which an appropriation is requested or to which an appropriation is made by the Legislature.

~~2-202.19.~~ "STO" means the West Virginia State Treasurer's office.

~~2-212.20.~~ "Transaction" means one electronic purchase or payment.

~~2-222.21.~~ "Treasurer" means the West Virginia State Treasurer or his or her designee.

§112-12-3. General Information.

3.1. Spending units shall use the methods provided by the treasurer to accept payments.

3.2. Electronic commerce methods available from the STO include, but are not limited to, telephone, IVR, POS terminal, internet, EFT and any other electronic payment method.

3.3. Governmental entities other than spending units may request to use the methods provided by the treasurer to accept payments.

3.4. The Treasurer may grant an exemption to a spending unit when the STO determines another entity may best meet the needs of the spending unit.

§112-12-4. Convenience Fees.

4.1. The Treasurer may authorize the use of convenience fees unless use is prohibited by law.

4.2. The treasurer shall set the amount of the convenience fees authorized.

4.3. ~~The amount of convenience fees must be related to the convenience of the customer~~ use of convenience fees must follow the merchant rules established by card networks.

4.4. The treasurer may contract with one or more card payment service providers.

§112-12-5. Request to assess and collect a convenience fee.

5.1. Spending units may accept payment for electronic commerce and select the methods to use from the methods made available by the STO.

5.2. A spending unit interested in accepting payments and payments with convenience fees for electronic commerce shall deal exclusively with the STO, unless otherwise authorized by the West Virginia Code or the Treasurer has granted an exemption.

5.3. The STO shall provide an application, which shall contain information on the spending unit, the nature of the proposed transactions, the goals and expectations of the spending unit, and such other matters as the Treasurer determines.

5.4. A spending unit shall complete an application, ensure the application is signed by an authorized person, and return it to the STO.

5.5. The STO will review each submitted application.

5.6. The STO shall approve a complete and timely application of a spending unit authorized to collect convenience fees. If the application is not complete or timely or if the spending unit has not been authorized to collect convenience fees, the STO may reject the application.

5.7. The STO shall return rejected applications with explanations of the reasons for rejection.

5.8. If the STO determines alternative methods to the payment methods selected by the spending unit may be better suited to the activity, the STO shall inform the spending unit of the alternative methods. The STO will provide only the methods selected by the spending unit.

§112-12-6. Duties of Spending Units.

6.1. The spending unit is responsible for acquiring the necessary computer system, software, and other matters required to process transactions.

6.2. For internet transactions, the website of a spending unit shall contain:

(a) complete description of the goods or services offered,

- (b) returning merchandise and refund policy,
- (c) customer service contact, including electronic mail and telephone number,
- (d) transaction currency is US dollars,
- (e) any legal or other restrictions,
- (f) order fulfillment, including, but not limited to, delivery policy and practices,
- (g) re-direct services to re-direct customers to the STO payment gateway to select the method of payment and execute the payment. The spending unit is also responsible for developing the "front end" website that will connect to the STO payment gateway,
- (h) privacy policy approved by the STO,
- (i) an opt-in system for customers to receive mail, electronic or regular US mail, and only retain information provided by a customer that has authorized maintenance of that information,
- (j) not sell or share the names and addresses of customers unless specific authorization is granted in the West Virginia Code,
- (k) appropriate security controls, and
- (l) conspicuous disclosure of the nature and amount of the convenience fees.

6.3. The spending unit is responsible for all discount and other fees and amounts assessed or charged for providing the selected methods of receiving payment.

6.4. The spending unit shall not store charge, credit or debit card or electronic payment account numbers as that information is confidential. The only authorized use of a charge, credit or debit card or electronic payment is to process an authorized transaction. At most, a spending unit may have non-persistent cookies to ensure confidential information is not stored.

6.5. The spending unit shall deposit all convenience fees ~~collected by the spending unit~~ it receives in an account in the state treasury. The spending unit shall expend the convenience fees ~~collected~~ received to defray the costs of providing internet services, charge, credit or debit card payments or electronic payments to customers.

6.6. The spending unit shall ~~establish procedures to~~ reconcile receipts with the ~~amount~~ amounts reported.

§112-12-7. STO Duties.

7.1. The STO shall:

(a) provide the training and assistance needed for a spending unit to accept payments for electronic commerce,

(b) provide a list of the type of approved methods to accept payment for electronic commerce and make the methods available for use by spending units,

(c) obtain merchant account numbers for spending units authorized to collect payments for electronic commerce, and

(d) test the acceptance process prior to implementing the acceptance of payments.

7.2. The STO may audit the spending units web site as needed.

7.3. The STO may assess or require the assessment of the system security of the spending unit at any time.

Harrison, Wilma

From: Merbedone, Christina
Sent: Thursday, July 25, 2013 9:26 AM
To: Harrison, Wilma
Subject: FW: Comments to Proposed STO Legislative Rules letter attachment
Attachments: Comments to Proposed STO Legislative Rules letter attachment.docx

FYI

From: Ellis, Danny
Sent: Friday, July 19, 2013 7:58 AM
To: Price, Misty; Merbedone, Christina
Subject: FW: Comments to Proposed STO Legislative Rules letter attachment

I think I sent this to you earlier

From: Erica Boggess [<mailto:EBoggess@wvhdf.com>]
Sent: Tuesday, July 16, 2013 2:31 PM
To: Ellis, Danny
Subject: Comments to Proposed STO Legislative Rules letter attachment

Danny,

Attached are the comments to the proposed legislative rules that give me a bit of concern. As you are aware, the Housing Development Fund is a governmental instrumentality of the State and a public body corporate, but it is not a State agency. Similar to other State funding entities, it has a role separate and apart from the daily operations of State government. The Housing Development Fund receives no State appropriations; it is self-supporting. We are hoping to get some clarification on some of the definitions used in the proposed rules.

Let me know when you have some time to meet.

Thank you.

Erica

Erica L. Boggess, CPA
Acting Executive Director
West Virginia Housing Development Fund
5710 MacCorkle Ave SE
Charleston, WV 25304

Phone 304-391-8638
Fax 304-391-8761
eboggess@wvhdf.com

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Comments to Proposed Legislative Rules of the State Treasurer's Office

Title 112 CSR Series 6: Selection of State Depositories for Disbursement Accounts Through Competitive Bidding

1. As currently written, the definition of "disbursement account" contained in §112-6-2.3 would appear to include the Housing Development Fund. W. Va. Code §§ 12-1-2(g) and 12-1-7 make clear that the provisions of those sections, which grant the rulemaking authority for this proposed rule, do not apply to the Housing Development Fund. There should be clarification to ensure the provisions of this proposed rule are not applied to the Housing Development Fund.

Title 112 CSR Series 12: Procedures for Fees in Collections by Charge, Credit or Debit Card or by Electronic Payment

1. The definition of "spending unit" contained in §112-12-2.18 specifically refers to an entity for which appropriation being requested from or made by the Legislature. The Housing Development Fund does not fit within this definition, as it neither requests nor receives an appropriation from the Legislature. Thus, the provisions of this proposed rule do not apply to the Housing Development Fund.

Title 112 CSR Series 4: Procedures for Deposit of Moneys with the State Treasurer's Office by State Agencies

1. The proposed changes to the definition of "agency" contained in §112-4-2.1 from "who or which collects moneys due the State" to "collecting moneys" would appear to make the Housing Development Fund subject to the provisions of the proposed rule. The language for this definition should either remain as it is currently under the existing rule, or further clarification should be made to ensure the provisions of this proposed rule are not applied to the Housing Development Fund.
2. The provisions of §112-4-3.9 (under the existing rule, §112-4-3.10), relating to the applicability of the proposed rule, should not be interpreted to apply to the Housing Development Fund. The moneys which are collected by the Housing Development Fund are not considered public funds, and as such, should not fall within the provisions of this proposed rule. Prior to the proposed change to the definition of "agency" discussed immediately above, it was clear that this proposed rule would not apply to the Housing Development Fund.

Title 112 CSR Series 7: Selection of State Depositories for Receipt Accounts

1. The proposed changes to the definition of "agency" contained in §112-7-2.2 from "moneys due the state" to "state funds," and the definition of "state funds" contained in §112-7-2.8 would appear to make the Housing Development Fund subject to the provisions of this proposed rule. W. Va. Code §§ 12-1-2(g) and 12-1-7 make clear that the provisions of those sections, which grant the rulemaking authority for this proposed rule, do not apply to the Housing Development Fund. There should be clarification to ensure the provisions of this proposed rule are not applied to the Housing Development Fund.



State of West Virginia

OFFICE OF THE STATE TREASURER
CHARLESTON, WV 25305

JOHN D. PERDUE
STATE TREASURER

DANNY ELLIS
ASSISTANT STATE TREASURER

1-800-422-7498
304-558-5000
FAX: 304-558-4097
www.wvtreasury.com

July 26, 2013

Erica L. Boggess, CPA
Acting Executive Director
West Virginia Housing Development Fund
5710 MacCorkle Avenue, SE
Charleston, WV 25304

Re: Proposed Amendments to Legislative Rules

Dear Erica:

Thank you for submitting comments pertaining to the proposed amendments to our legislative rules. We appreciate the time and effort the West Virginia Housing Development Fund ("HDF") took to review and submit comments. Our responses follow as they pertain to each rule:

1. 112 CSR 4
You have requested we ensure the provisions of this rule do not apply to the HDF. It was not our intent to include the HDF under this rule and have returned the definition of "Agency" to its current language in W. Va. Code R. §112-4-2.1, with one minor revision.
2. 112 CSR 6
You have requested we ensure the provisions of this rule do not apply to the HDF. It was not our intent to include the HDF under this rule and have added a clause in W. Va. Code R. §112-6-1.1 that effectively recites the provisions of W. Va. Code §12-1-2(g) as to entities to which the rule is not applicable.
3. 112 CSR 7
You have requested we ensure the provisions of this rule are not applied to the HDF. It was not our intent to include the HDF under this rule and have returned the definition of "Agency" to its current language in W. Va. Code R. §112-7-2.1, with one minor revision. In addition, the language already contained in W. Va. Code R. §112-7-1.1 should alleviate your concerns.
4. 112 CSR 12
You have noted that this rule does not apply to the HDF and we concur.

Hopefully I have addressed all of your comments in a manner that alleviates your concerns. If you have any further issues or questions, do not hesitate to contact me.

Sincerely,

Diana Stout
General Counsel

DS/wh

C: Treasurer John Perdue

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE

W. Va. Code §12-3A-6(e) provides, "The State Treasurer shall propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this Code to implement the provisions of this section."