

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #7

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2009 JUL -1 P 4:57

WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: State Treasurer's Office TITLE NUMBER: 112

CITE AUTHORITY: West Virginia Code §12-3A-6

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 PROPOSED: 12

TITLE OF RULE BEING PROPOSED: Procedures for Fees in Collections by Charge,
Credit and Debit Card or by Electronic Payment

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:

Use additional sheets if necessary


Authorized Signature



State of West Virginia

OFFICE OF THE STATE TREASURER

CHARLESTON, WV 25305

JOHN D. PERDUE
STATE TREASURER

JERRY SIMPSON
ASSISTANT STATE TREASURER

CASH MANAGEMENT
DIVISION
Check Hotline: 1-866-243-9010
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July 1, 2004

The Honorable Joe Manchin, III
Secretary of State
State Capitol
1900 Kanawha Boulevard, East
Charleston, WV 25305

Re: 112 CSR 12 – Proposed Emergency Rule

Dear Secretary Manchin:

Enclosed please find for filing the proposed emergency rule 112 CSR 12, Procedures for Fees in Collections by Charge, Credit or Debit Card or by Electronic Payment. Please accept this letter as evidence of my approval of the proposed rule.

If you have any questions, do not hesitate to contact me or my General Counsel, Diana Stout.

Sincerely,

A handwritten signature in cursive script that reads "John D. Perdue".

John Perdue
State Treasurer

JP/wlt

cc: Diana Stout

EMERGENCY RULE QUESTIONNAIRE

DATE: July 1, 2004

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) State Treasurer's Office

1900 Kanawha Blvd., East, E-122, Charleston, WV 25305

Attn: Diana Stout, General Counsel 304.558.5000

EMERGENCY RULE TITLE: Procedures for Fees in Collections by Charge, Credit or Debit Card or by Electronic Payment

1. Date of filing July 1, 2004

2. Statutory authority for promulgating emergency rule:

West Virginia Code §12-3A-6

3. Date of filing of proposed legislative rule: July 1, 2004

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

This rule will enable various spending units to collect moneys electronically.

The faster moneys are deposited in the state treasury, the more earnings

the state will receive. Thus, this rule will protect the public interest

from substantial harm.

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.

Timely collection of moneys due the state is of paramount importance
in maintaining the fiscal integrity of the state of West Virginia.

This rule will facilitate those collections and will enable the state
to accrue more earnings. Only promulgation of this rule as an emergency
rule will prevent substantial harm to the public interest by ensuring
timely collections of moneys due the state.

112 CSR 12

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

Brief Summary of the Rule:

This rule establishes the procedures for authorizing and implementing the provisions of West Virginia Code §12-3A-6, which will enable spending units not prohibited to accept payments via electronic commerce. When a spending unit accepts charge, credit or debit cards or electronic payments, various fees and other expenses are incurred by the spending unit. Some spending units are required by statute to collect a set sum and do not believe they can pay the fees associated with processing payments via electronic commerce. Still other spending units cannot afford the associated fees. This rule will allow those spending units to collect payments via electronic commerce.

Statement of Circumstances Which Require the Proposed Rule:

The timely collection of state moneys is of paramount importance to the fiscal integrity of the state of West Virginia. Technological advances and changes in the banking industry necessitate that the Treasurer's Office accept payments by electronic commerce, i.e., through charge, credit or debit cards or by electronic payments. This rule will prevent substantial harm to the public interest by ensuring timely collections of moneys due the state.

(Note: West Virginia Code §12-3A-4 requires the Treasurer propose a legislative rule and authorizes the Treasurer to propose an emergency rule.)

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Procedures for Fees in Collections by Charge, Credit or Debit Cards or by Electronic Payment

Type of Rule: Legislative Interpretive Procedural

Agency: State Treasurer's Office

Address: 1900 Kanawha Blvd., East, E-122

Charleston, WV 25305

Contact: Diana Stout, General Counsel, 304.558.5000

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	None		None		
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:

As with other computerization, over time payments made electronically will provide a convenience to our citizens and other customers, and will improve earnings.

3. Objectives of These Rules:

The objective of this rule is to improve collections of moneys due the state.

Rule Title: Procedures for Fees in Collections by Charge, Credit or Debit Cards or by Electronic Payment

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

Electronic collection of moneys due the state will enable the moneys to be collected faster, with less uncertainty, and will create additional earnings.

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

Electronic collections will enable citizens and other customers to make payments via the internet and other electronic means to state spending units, which will improve the collection process.

C. Economic Impact on Citizens/Public at Large.

See 4.B.

Date: July 1, 2004

Signature of Agency Head or Authorized Representative:

Dana Stout

112 CSR 12

FILED

TITLE 112
EMERGENCY RULE
STATE TREASURER'S OFFICE

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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. – West Virginia Code §12-3A-6.

1.3 Filing Date. – _____.

1.4 Effective Date. – _____.

§112-12-2. Definitions.

2.1. "ACH" means automated clearinghouse.

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

2.4. "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. "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.

2.6. "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.

2.7. "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.

2.8. "Customer" means any person or entity purchasing from a spending unit.

2.9. "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.

2.10. "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.

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

2.12. "EFT" means electronic funds transfer.

2.13. "Electronic Payment" means an EFT, including, but not limited to, payment by ACH and ACH based electronic check.

2.14 "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.

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

2.16. "IVR" means a telephone interactive voice response system.

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

2.18. "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.

2.19. "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.

2.20. "STO" means the West Virginia state treasurer's office.

2.21. "Transaction" means one electronic purchase or payment.

2.22. "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.

§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.

4.4. The amount of convenience fees for similar transactions shall be the same.

4.5. 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.

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) provide 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 Deposit all convenience fees collected by the spending unit in an account in the state treasury. The spending unit shall expend the convenience fees collected 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 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 unit's 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.