

Secretary of State's Office
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

State of West Virginia
Joe Manchin, III
Secretary of State

Telephone: (304) 558-6000
Toll Free: 1-866-SOS-VOTE
Corporations: (304) 558-8000
FAX: (304) 558-0900
www.wvsos.com

July 16, 2003

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: WV State Auditor's Office

RULE: Amendments, 155CSR7, State Purchasing Card Program

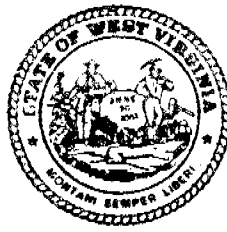
DATE FILED AS AN EMERGENCY RULE: June 26, 2003

DECISION NO. 13-03

Following review under W. Va. Code §29A-3-15a, it is the decision of the Secretary of State that the above emergency rule is **approved**. A copy of the complete decision with required findings is available from this office.

FILED
2003 JUL 16 4 16 44
OFFICE WEST VIRGINIA
SECRETARY OF STATE

JOE MANCHIN, III
Secretary of State



Secretary of State's Office
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

State of West Virginia
Joe Manchin, III
Secretary of State

Telephone: (304) 558-6000
Toll Free: 1-866-SOS-VOTE
Corporations: (304) 558-8000
FAX: (304) 558-0900
www.wvsos.com

EMERGENCY RULE DECISION
(ERD 13-03)

AGENCY: West Virginia State Auditor's Office
RULE: Amendments, 155CSR7, State Purchasing Card Program
FILED AS AN EMERGENCY RULE: June 26, 2003

- par. 1 The West Virginia State Auditor's Office (Auditor) has filed the above amendments to an existing rule as an emergency rule.
- par. 2 W. Va. Code 29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [§29A-3-15a].
- par. 4 (A) Procedural Compliance: W. Va. Code §29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The Auditor filed this emergency rule with supporting documents with the Secretary of State June 26, 2003 and with the LRMRC June 26, 2003.

par. 7 It is the determination of the Secretary of State that the Auditor has complied with the procedural requirements of W. Va. Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- W. Va. Code §12-3-10a reads:

§12-3-10a. Purchasing card program.

Notwithstanding the provisions of section ten of this article, payment of claims may be made through the use of the state purchasing card program authorized by the provisions of this section. 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 purchasing card program shall be conducted so that procedures and controls for the procurement and payment of goods and services are made more efficient. The program shall permit spending units to use a purchase charge card to purchase goods and services. The amount of any one purchase made with the purchase charge card shall not exceed the amount contained in the jointly proposed rules of the auditor and the purchasing division of the department of administration proposed in accordance with the provisions of article three, chapter twenty-nine-a of this code: Provided, That purchasing cards may not be utilized for the purpose of obtaining cash advances, whether the advances are made in cash or by other negotiable instrument. Purchases of goods and services must be received either in advance of or simultaneously with the use of a state purchasing card for payment for those goods or services. The auditor, by legislative rule, may eliminate the requirement for vendor invoices and provide a procedure for consolidating multiple vendor payments into one monthly payment to a charge card vendor. Selection of a charge card vendor to provide state purchase cards shall be accomplished by competitive bid. The purchasing division of the department of administration shall contract with the successful bidder for provision of state purchase charge cards. Purchase charge cards issued under the program shall be used for official state purchases only. 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.

par. 9 It is the determination of the Secretary of State that the DHHR has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- W. Va. Code §29A-3-15(f) defines "emergency" as follows:

(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or

welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the DHHR are as follows:

This 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 payments for goods and services in transactions which do not exceed the transaction limit.

The State Auditor's Office is filing this emergency rule based on the budgetary impact of the passage of Higher Education HB 2224.

The Higher Education budgets have been appropriated based upon this Legislation. HB 2224 has created a situation requiring the Auditor's Office to file this proposed emergency rule to secure the budgets that are currently in place. Without filing this emergency rule, Higher Education would find themselves financially, budgetary and economically challenged to stay within the confines of their appropriated budgets. Therefore, this emergency rule filing must be filed simultaneously to meet the requirements of HB 2224.

(ED Note: The Higher Education Policy Commission filed their rule, 133CSR43, Purchasing Efficiencies, on June 11, 2003 and became effective immediately (W. Va. Code §29A-3A-16).

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . "time limitation"

par. 14 This decision shall be cited as Emergency Rule Decision 13-03 or ERD 13-03 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia State Auditor's Office, the Attorney General and the Legislative Rule Making Review Committee.



JOE MANCHIN, III
Secretary of State

Entered _____

2003 JUL 16 A 10:44
FILED
OFFICE WEST VIRGINIA
SECRETARY OF STATE