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September 18, 2001

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Department of Administration

RULE: 148CSR7, Amendments, "State Purchasing Card Program"

DATE FILED AS AN EMERGENCY RULE: August 29, 2001

DECISION NO. 11-01

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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FILED

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.

JOE MANCHIN, III
Secretary of State

By:
Administrative Assistant



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EMERGENCY RULE DECISION
(ERD 11-01)

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- par. 1 The Auditor has filed the above amendments to an existing rule as emergency rule using the Department of Administration's Title Number.
- 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 August 29, 2001 and with the LRMRC August 29, 2001.

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 §18B-5-4(a)(5) reads:

(5) Shall advertise for bids on all purchases exceeding twenty-five thousand dollars, to purchase by means of sealed bids and competitive bidding or to effect advantageous purchases through other accepted governmental methods and practices: Provided, however, That for printing services, bids shall be advertised by written notification of such bids to any print shop, affiliated with an institution of higher education and operated by classified employees, on all purchases exceeding five thousand dollars;

par. 9 It is the determination of the Secretary of State that the Auditor 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 Auditor are as follows:

SB 703 passed April 14, 2001, effective July 1, 2001 states "shall advertise for bids on all purchases exceeding \$25,000, to purchase by means of sealed bids and competitive bidding..." The Purchasing Card rule currently states all purchases exceeding \$15,000. Therefore, 148CSR7 is in conflict with state law.

The other proposed amendments include a revision to subdivision 2.18.d that allows for a transaction limit of \$5000 for higher education. The Auditor is proposing that this limit be raised because higher education's purchasing guidelines do not require bids until \$5,000 is reached. There are also a few minor grammatical/punctuation amendments to the rule that are proposed.

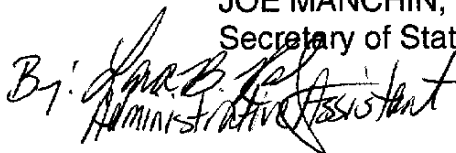
par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . "immediate preservation of public peace, health, safety or welfare"

par. 14

This decision shall be cited as Emergency Rule Decision 11-01 or ERD 11-01 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Department of Administration, the State Auditor, the Attorney General and the Legislative Rule Making Review Committee.



JOE MANCHIN, III
Secretary of State

By: 
ADMINISTRATIVE ASSISTANT

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