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(Plus all the volunteer
help we can get)

September 4, 1996

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Department of Administration

RULE: New Rule, Series 7, State Purchasing Card Program

DATE FILED AS AN EMERGENCY RULE: July 25, 1996

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SEP 5 10 42 AM '96

FILED

DECISION NO. 15-96

Following review under WV 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.

Handwritten signature of Ken Hechler in cursive script.

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EMERGENCY RULE DECISION
(ERD 15-96)

AGENCY: Department of Administration
RULE: New Rule, Series 7, State Purchasing Card Program
FILED AS AN EMERGENCY RULE: July 25, 1996

- par. 1 The Department of Administration (Department) has filed the above new rule as an emergency rule.
- par. 2 West Virginia 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(b))].
- par. 4 (A) Procedural Compliance: WV 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 thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Department filed this emergency rule with supporting documents with the Secretary of State July 25, 1996 and with the LRMRC July 25, 1996.
- par. 7 It is the determination of the Secretary of State that the Department has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

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 five hundred dollars: 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 purchasing 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 §29A-3-1 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 Department has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- WV 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 Department are as follows:

Failure to immediately implement this rule will cost tax payers at least \$6.65 million annually. The Code requires this rule be promulgated before the program can be implemented. Therefore, unless this emergency rule is authorized, the program cannot be implemented and the taxpayers will be substantially harmed.

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). . . substantial harm to the taxpayers.

par. 14

This decision shall be cited as Emergency Rule Decision 15-96 or ERD 15-96 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 Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

Entered _____

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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