



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

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Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE EXEMPT, INTERPRETIVE OR PROCEDURAL
RULE**

AGENCY: Emergency Management TITLE-SERIES: 170-05
RULE TYPE: Procedural Amendment to Existing Rule: No Repeal of existing rule: No
RULE NAME: Purchasing During States of Emergency
CITE STATUTORY AUTHORITY: 5A-3-3c

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

September 26, 2021

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Stacy L Nowicki-Eldridge -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

**TITLE 170
PROCEDURAL RULE
WEST VIRGINIA DIVISION OF EMERGENCY MANAGEMENT**

**SERIES 5
PURCHASES DURING STATES OF EMERGENCY**

§170-5-1. General.

1.1 Scope: These Purchasing Procedures are an explanation and clarification of operative procedures for contracts and renewal of contracts which occur during a declared state of emergency, and purchases from the federal government, so long as the purchase or contract is directly and solely related to the recovery from the declared state of emergency.

1.2. Authority -- W. Va. Code §5A-3-3c.

1.3. Filing Date – August 27, 2021.

1.4. Effective Date –September 26, 2021.

§170-5-2. Definitions.

2.1. Unless the context in which used clearly requires a different meaning, the definitions contained in W. Va. Code § 15-5-2 shall apply to this rule, in addition to the definitions set forth below.

2.1.a. “Director” shall mean the director of the Division of Emergency Management.

2.1.b. “Division” shall mean the Division of Emergency Management.

§170-5-3. Procedures for entering into contracts during a declared state of emergency for items necessary to recover from the declared state of emergency.

3.1. The Director may authorize contracts for items necessary to recover from the declared state of emergency. For purposes of this section, the contract must be necessary, directly and solely related to the recovery from a declared state of emergency and must be entered into during the declared state of emergency.

3.2. Purchasers of the division who have the authority or responsibility to purchase commodities and services, shall not make any purchase(s), without contacting the Director, or designee, except for purchases related to the operation of a division vehicle/utility vehicle.

3.2.a. When such a request is made, the Director will determine if the request is appropriate.

3.2.b. If the request is deemed appropriate, the Director will notify the Secretary of the Department of Homeland Security of the request, and the Secretary must approve or deny the purchase.

If the purchase is approved, the Director, or his or her designee, shall instruct the employee how to proceed or will advise the employee that he/she will assume the responsibility of making the procurement.

3.3. If circumstances are such, due to time or circumstance constraints, the Director, or his or her designee, shall make attempts to secure bids, or shall document open market pricing for items, and may purchase goods or services which accomplish the lowest price available, with the fastest delivery time. The Director may purchase a more expensive good or service, if the delivery time is faster, if time is of the essence.

§170-5-4. Procedures for renewing contract which were entered into during a declared state of emergency for items necessary to recover from the declared state of emergency.

4.1. If a contract is entered pursuant to this rule is needed to be renewed, such renewal shall be made as long as the contract is still necessary for the state to recover from a declared state of emergency. This subsection may not be utilized for contracts which include as part of its terms permanent reconstruction after the initial state of emergency has ended.

4.2. If renewal of the contract is deemed appropriate by the Director, the Director will notify the Secretary of the Department of Homeland Security of the request, and the Secretary must approve or deny the renewal. If the renewal is approved, the Director, or his or her designee, shall instruct staff to renew the contract.

§170-5-5. Procedures for purchasing goods or services from the Federal Government.

5.1. If the federal government, or any agency that is part of the federal government, offers for sale to the State goods or services directly and solely related to the recovery of the state from a declared state of emergency, the Director may purchase these goods or services from the federal government, or that federal agency, without the need to follow subdivision 2.5. or 2.6 of this rule.

5.2. If the purchase is deemed appropriate by the Director, the Director will notify the Secretary of the Department of Homeland Security of the request, and the Secretary must approve or deny the purchase. If the purchase is approved, the Director, or his or her designee, shall instruct staff to accomplish the purchase.

§170-5-6. Certification by the Director.

6.1. The Director shall, in writing, for any purchase necessary and appropriate under W.Va. Code §5A-3-3c, certify that the contract or purchase is directly and solely related to the recovery from a declared state of emergency and attach a copy of the proclamation to the certification.

6.2. The Director, or his or her designee, shall maintain certifications issues pursuant to this section, at a minimum, until the contracts or purchase agreements have been fully executed.