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June 17, 2005

NOTICE OF EMERGENCY RULE DECISION BY THE  
OFFICE OF THE ATTORNEY GENERAL

AGENCY: Secretary of State

RULE: Amendment to 153-30 - Use of Digital Signatures, State Authority and State Repository

DATE FILED AS EMERGENCY RULE: May 10, 2005

DECISION NO.: ERD 01-05

FILED  
2005 JUN 22 A 10:35  
OFFICE OF THE ATTORNEY GENERAL  
SECRETARY OF STATE

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.

WILLIAM S. STEELE  
MANAGING DEPUTY ATTORNEY GENERAL

EMERGENCY RULE DECISION  
ERD 01-05

AGENCY: Secretary of State

RULE: Amendment to 153-30 - Use of Digital Signatures, State Certificate Authority and State Repository

FILED AS EMERGENCY RULE: May 10, 2005

The Secretary of State has filed the above amendment to existing rule emergency rule.

W. Va. Code § 29A-3-15a requires the Office of the Attorney General to review all emergency rules filed by the Secretary of State after March 8, 1986. This review requires the Office of the Attorney General 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.

Following review, the Office of the Attorney General shall issue a decision as to whether or not such an emergency rule should be disapproved [§ 29A-3-15a].

- (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).

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 Office of the Attorney General shall rule in favor of procedural compliance.

The Secretary of State filed this emergency rule with supporting documents with the Secretary of State on May 10, 2005, and with the LRMRC on May 10, 2005.

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

(B) Statutory Authority – W. Va. Code § 39A-3-3(a) reads:

(a) The secretary of state shall propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish standards and processes to facilitate the use of electronic signatures in all governmental transactions by state agencies subject to chapter twenty-nine-a of this code. The rules shall include minimum standards for secure transactions to promote confidence and efficiency in legally binding electronic document transactions. The rules may be amended from time to time to keep the rules current with new developments in technology and improvements in secured transaction process.

It is the determination of the Office of the Attorney General that the Secretary of State has not exceeded its statutory authority in promulgating this emergency rule.

(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.*

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.

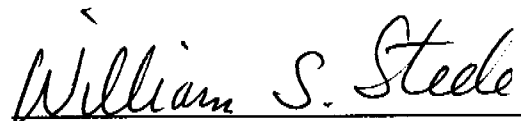
The facts and circumstances as presented by the Secretary of State are as follows:

The purpose of this rule is to allow state, county, and municipal agencies to use electronic signature technology with sound security controls to replace manual signatures on documents. This technology will encourage electronic transactions within and among agencies and between the general public and governmental agencies and reduce cost and delays.

The rule allows selection of an existing federal program as the state certificate authority and repository, thereby saving the entire cost of establishing a state certificate authority.

It is the determination of the Office of the Attorney General that this proposal qualifies under the definition of an emergency as defined in W. Va. Code § 29A-3-15(f).

This decision shall be cited as Emergency Rule Decision ERD 01-05 or ERD 01-05, and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Secretary of State, the Office of the Attorney General and the Legislative Rule Making Review Committee.

A handwritten signature in cursive script that reads "William S. Steele". The signature is written in dark ink and is positioned above a horizontal line.

WILLIAM S. STEELE  
MANAGING DEPUTY ATTORNEY GENERAL

Entered June 22, 2005