



OFFICE OF THE SECRETARY OF STATE  
STATE OF WEST VIRGINIA

**Betty Ireland**  
Secretary of State

FILED  
2006 FEB -9 A 9:07  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

February 7, 2006

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Division of Homeland Security & Emergency Management

RULE: New Rule, 170CSR1, Mine & Industrial Accident Rapid Response System

DATE FILED AS AN EMERGENCY RULE: February 1, 2006

DECISION NO. 1-06

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.

  
BETTY IRELAND  
Secretary of State

Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, West Virginia 25305

EMERGENCY RULE DECISION  
(ERD 1-06)

AGENCY: Division of Homeland Security & Emergency Management  
RULE: New Rule, 170CSR1, Mine & Industrial Accident rapid Response System

FILED AS AN EMERGENCY RULE: February 1, 2006

- par. 1 The Division of Homeland Security & Emergency Management (Division) has filed the above new 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 Division filed this emergency rule with supporting documents with the Secretary of State February 1, 2006 and with the LRMRC February 1, 2006.
- par. 7 It is the determination of the Secretary of State that the Division 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 §15-5B-5-5B-5 reads:

***§15-5B-5. Rule-making authority.***

***The Director of the Division of Homeland Security and Emergency Management shall propose emergency and legislative rules for promulgation in accordance with article three, chapter twenty- nine-a of this code regarding the implementation and administration of the Mine and Industrial Accident Rapid Response System. The requirements of this article enacted during the regular session of the Legislature in January, two thousand six, shall not be implemented until the emergency rule authorized herein has been approved***

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

SB 247, as passed & enrolled by the Legislature, requires the Director of the Division of Homeland Security & Emergency Management to establish & operate the Mine & Industrial Accident Rapid Response System. This system is to be designed to receive emergency calls from mining & industrial accident sites and to coordinate the effective & efficient response to the same. The Director is further charged to devise operating procedures for the requisite call center; organize & equip the call center; obtain & publish to various interested parties a state-wide reporting telephone number; and, coordinate all operations with the office of Miners' Health, Safety & Training.

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). "for the immediate preservation of public peace, health, safety or welfare," "to prevent substantial harm to the public interest" and mandated in SB 247.

par. 14

This decision shall be cited as Emergency Rule Decision 1-06 or ERD 1-06 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Division of Homeland Security and Emergency Management, the Attorney General and the Legislative Rule Making Review Committee.

  
BETTY IRELAND  
Secretary of State

Entered \_\_\_\_\_

FILED  
2006 FEB - 9 A 9:07  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE