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August 24, 2009

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

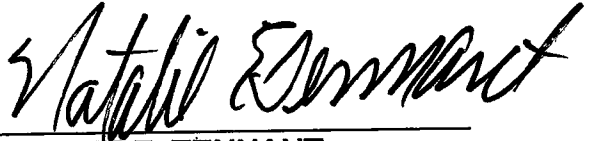
AGENCY: Division of Homeland Security and Emergency Management

RULE: New Rule, 170CSR2, Industrial Accident Rapid Response Rule

DATE FILED AS AN EMERGENCY RULE: August 4, 2009

DECISION NO. 15-09

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.



NATALIE E. TENNANT
Secretary of State

EMERGENCY RULE DECISION
(ERD 15-09)

AGENCY: Division of Homeland Security and Emergency Management
RULE: New Rule, 170CSR2, Industrial Accident Rapid Response Rule
FILED AS AN EMERGENCY RULE: August 4, 2009

- par. 1 The Division of Homeland Security and 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 August 4, 2009 and with the LRMRC August 4, 2009.
- 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-3a(h) reads:

(h) The Division of Homeland Security and Emergency Management is authorized to promulgate rules, including emergency rules, pursuant to the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this section.
- 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 279 passed April 11, 2009, requires the establishment, within the Mine & Industrial Accident Rapid Response System, procedures to provide adequate, appropriate & effective coordination of response operations to accidents involving industrial sites. The Mine & Industrial Accident Response System is vital to the life & health of WV's industrial workers involved in hazardous operations & the general public.

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" and "prevent substantial harm to the public interest"

par. 14 This decision shall be cited as Emergency Rule Decision 15-09 or ERD 15-09 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 & Emergency Management, the Attorney General and the Legislative Rule Making Review Committee.



NATALIE E. TENNANT
Secretary of State

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