

**WEST VIRGINIA  
SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #7

**Do Not Mark In this Box**

FILED

1997 JUN 30 PM 3:55

SECRETARY OF STATE

**NOTICE OF AN EMERGENCY RULE**

AGENCY: West Virginia Department of Labor TITLE NUMBER: 42

CITE AUTHORITY: W. Va. Code § 21-3A-7

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 15

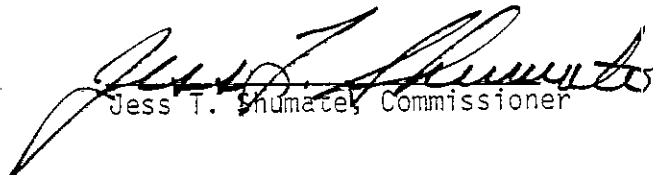
TITLE OF RULE BEING FILED AS AN EMERGENCY: West Virginia Occupational  
Safety and Health Act - adoption of Federal Standards.

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

The adoption of the Federal Occupational Safety and Health Standards is mandated under W. Va. Code § 21-3A-7.

Use Additional Sheets If Necessary.

  
Jess T. Shumate, Commissioner

FILED

TITLE 42  
LEGISLATIVE RULES.

1987 JUN 30 PM 3:55

OFFICE OF THE SECRETARY OF STATE

WEST VIRGINIA DEPARTMENT OF LABOR  
SERIES 15  
INCORPORATION OF OCCUPATIONAL SAFETY AND HEALTH STANDARDS

21-3A. General

1.1. Scope - The Code of Federal Regulations, Occupational Safety and Health Standards (29 CFR 1900 to 1910 and 29 CFR 1926/1910), Revised as of July 1, 1985, contains Safety and Health Standards mandated for adoption under the West Virginia Occupational Safety and Health Act as administered by the West Virginia Department of Labor. The regulations contain standards of practice which provide, insofar as possible, a safe and healthful work environment for all employees. It also contains certain inspection and reporting requirements necessary to carry out the provisions of the Act.

1.2. Authority - W. Va. Code § 21-3A-7.

1.3. Filing Date.

1.4. Effective Date.

§ 21-3A-7. Incorporation by Reference.

The Code of Federal Regulations, (29 CFR 1900 to 1910 and 29 CFR 1926/1910) are hereby incorporated by reference as a legislative rule. This document is available from the Secretary of State's Office or the West Virginia Department of Labor.

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

BARBARA STARCHER  
Deputy Secretary of State

RICHARD S. STEPHENSON  
Deputy Secretary of State

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STATE OF WEST VIRGINIA  
SECRETARY OF STATE

Charleston 25305

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DONALD R. WILKES  
Director, Corporations

VIRGINIA SKEEN  
Special Assistant

(Plus all the volunteer  
help we can get)

August 11, 1987

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Department of Labor

RULE: New Series, 15, Incorporation of Occupational Safety and Health Standards

DATE FILED AS AN EMERGENCY RULE: June 30, 1987

DECISION NO. 11-87

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

A handwritten signature in cursive script, appearing to read "Ken Hechler", written over a horizontal line.

KEN HECHLER  
Secretary of State

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE Aug 11, 1987  
ADMINISTRATIVE LAW DIVISION

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Secretary of State

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## STATE OF WEST VIRGINIA

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#### DECISION

#### Emergency Rule Decision (ERD 11-87)

AGENCY: Department of Labor  
RULE: New Rule, Series 15, Incorporation of Occupational  
Safety and Health Standards

DATE FILED AS AN EMERGENCY RULE: June 30, 1987

- par. 1 The Department of Labor has filed a new rule, Series 15, incorporating by reference the Federal occupational safety and health rules (29CFR 1900 to 1910 and 29CFR 1926/1910).
- 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(a)].
- 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 ERD 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 Department of Labor has filed this emergency rule with supporting documents with the Secretary of State on June 30, 1987, and with the LRMRC on July 8, 1987.
- par. 7 It is the determination of the Secretary of State that the Department of Labor has complied with the procedural requirements of WV Code §29A-3-15.
- par. 8 (B) Statutory Authority -- WV Code §21-3A-7 reads in part:  
*§21-3A-7. Adoption of federal and state standards; variances.*  
*(a) The commissioner, on or before the first day of July, one thousand nine hundred eighty-seven, shall provide at the minimum, for the adoption of all occupational safety and health standards, amendments or changes adopted or recognized by the United States Secretary of Labor under the authority of the Occupational Safety Health Act of 1970, which are in effect on the effective date of this section (June 12, 1987).*
- par. 9 It is the determination of the Secretary of State that the Department of Labor has not exceeded its statutory authority in the promulgation of these emergency rules.
- par. 10 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:  
*(g) 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 Department of Labor presents this emergency rule in order to comply with the time limitation established by WV Code §21-3A-7(a).
- par. 13 It is the decision of the Secretary of State that this proposal by the Department of Labor is in procedural compliance with WV Code 29A-3-15; does not exceed the statutory authority of the Department of Labor; and that the facts and circumstances presented constitute an emergency. Therefore, the Secretary of State decides that this emergency rule should be approved.

par. 14 This decision shall be cited as Emergency Rule Decision 11-87 or ERD 11-87 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Department of Labor, the Attorney General and the Legislative Rule Making Review Committee.



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KEN HECHLER  
SECRETARY OF STATE

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE

Entered

THIS DATE

Aug 11, 1987

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ADMINISTRATIVE LAW DIVISION