



FILED

2009 SEP 18 AM 10:18

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

Office of the Secretary of State  
Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, West Virginia 25305

**Natalie E. Tennant**  
Secretary of State  
State of West Virginia

Telephone: (304) 558-6000  
Toll Free: 1-866-SOS-VOTE  
Fax: (304) 558-0900  
www.wvsos.com

September 17, 2009

**NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE**

**AGENCY:** Division of Motor Vehicles

**RULE:** Amendment, 91CSR5, Denial, Revocation, Restriction or NonRenewal of Driving Privileges

**DATE FILED AS AN EMERGENCY RULE:** September 9, 2009

**DECISION NO. 23-09**

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.

A handwritten signature in black ink, appearing to read "Natalie E. Tennant", written over a horizontal line.

**NATALIE E. TENNANT**  
Secretary of State

EMERGENCY RULE DECISION  
(ERD 23-09)

AGENCY: Division of Motor Vehicles  
RULE: Amendment, 91CSR5, Denial, Revocation, Restriction or NonRenewal of Driving Privileges

FILED AS AN EMERGENCY RULE: September 9, 2009

- par. 1 The Division of Motor Vehicles (Division) has filed the above amendment to an existing 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 September 9, 2009 and with the LRMRC September 9, 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 17A-2-9(b) reads:  
  
*(b) The commissioner may adopt and enforce any rules that are necessary to carry out the provisions of this chapter and any other laws the enforcement and administration of which are vested in the department.*
- 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:

This emergency rule incorporates rule changes made necessary by legislation passed during the 2008 regular session, approved by the 2009 Legislature, incorporated into House Bill 2218 (2009 Regular Session) and signed by the Governor. Due to a procedural error, the version of House Bill 2218 signed by the Governor was not the version passed by the Legislature and for technical reasons, the changes were not authorized. This rule is being filed as an emergency rule to prevent substantial harm to the public interest. The circumstances necessitating an emergency filing are beyond the control of the Division of Motor Vehicles. DMV programs and processes have been modified as a result of the passage of House Bill 2218 and the previous authorization of this rule.

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). . . "prevent substantial harm to the public interest"

par. 14 This decision shall be cited as Emergency Rule Decision 23-09 or ERD 23-09 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Division of Motor Vehicles, the Attorney General and the Legislative Rule Making Review Committee.



NATALIE E. TENNANT  
Secretary of State

Entered \_\_\_\_\_

OFFICE OF THE  
SECRETARY OF STATE

2009 SEP 18 AM 10:18

FILED