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October 21, 2002

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: DIVISION OF MOTOR VEHICLES

RULE: AMENDMENT, 91CSR12, MOTOR VEHICLE INSPECTION MANUAL

DATE FILED AS AN EMERGENCY RULE: OCTOBER 18, 2002

DECISION NO. 23-02

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.

JOE MANCHIN, III  
Secretary of State

STATE OF WEST VIRGINIA  
SECRETARY OF STATE

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EMERGENCY RULE DECISION  
(ERD 23-02)

AGENCY: DIVISION OF MOTOR VEHICLES  
RULE: AMENDMENT, 91CSR12, MOTOR VEHICLE INSPECTION MANUAL  
FILED AS AN EMERGENCY RULE: OCTOBER 18, 2002

- par. 1 The Division of Motor Vehicles (DMV) has filed the above amendments 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 DMV filed this emergency rule with supporting documents with the Secretary of State October 18, 2002 and with the LRMRC October 18, 2002.

par. 7 It is the determination of the Secretary of State that the DMV 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 reads in part:

*(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 W. Va. Code further states in 17C-16-4:

*§17C-16-4. Commissioner to require periodical inspection; acceptance of certificate of inspection from another state; suspension of registration of unsafe vehicles.*

*(a) The commissioner of motor vehicles shall once each year require that every motor vehicle, trailer, semitrailer, and pole trailer registered in this state be inspected and that an official certificate of inspection and approval be obtained for each such vehicle.*

*Such inspections shall be made and such certificates obtained with respect to the mechanism, brakes, and equipment of every such vehicle as shall be designated by the commissioner.*

*The commissioner is hereby authorized to make necessary rules and regulations for the administration and enforcement of this section and to designate any period or periods of time during which owners of any vehicles, subject to this section, shall display upon such vehicles certificates of inspection and approval or shall produce the same upon demand of any officer or employee of the department designated by the commissioner or any police or peace officer when authorized by the commissioner.*

*(b) The commissioner may authorize the acceptance in this state of a certificate of inspection and approval issued in another state having an inspection law similar to this chapter and may extend the time within which a certificate shall be obtained by the resident owner of a vehicle which was not in this state during the time an inspection was required.*

*(c) The commissioner may suspend the registration of any vehicle which he determines is in such unsafe condition as to constitute a menace to safety or which after notice and demand is not equipped as required in this chapter or for which a required certificate has not been obtained.*

par. 10 It is the determination of the Secretary of State that the DMV has not exceeded its statutory authority in promulgating this emergency rule.

par. 11 (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. 12 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.

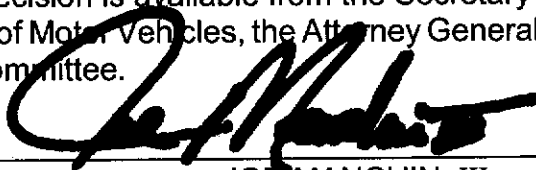
par. 13 The facts and circumstances as presented by the DMV are as follows:

This rule alleviates economic hardship caused to businesses and citizens of West Virginia, including motor vehicle dealers that have been prohibited from selling new motor vehicles or reselling used motor vehicles manufactured with off-road activity lights. The loss of sales of these vehicles to citizens of West Virginia and surrounding states has a negative economic impact and results in lost revenue for motor vehicle dealers who are major employers in many areas of the state. This emergency rule allows vehicles manufactured with off-road lights to pass state inspection, therefore alleviating the economic and business disruption and restoring consumer fairness.

W. Va. Code §17C-15-17 does not include a reference to off-road lighting systems now being offered by manufacturers as standard equipment on new models. These off-road lighting systems do not fall under any of the enumerated categories identified in W. Va. Code §17C-15-17. Consequently this emergency rule is necessary to provide guidance on this issue.

par. 14 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). . . "to prevent substantial harm to the public interest."

par. 15 This decision shall be cited as Emergency Rule Decision 23-02 or ERD 23-02 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.



JOE MANCHIN, III  
Secretary of State

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