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ARCH A. MOORE, JR.
Governor

DEPARTMENT OF MOTOR VEHICLES
STATE OFFICE BUILDING
CHARLESTON, W. VA.
25317

OFFICE OF THE SECRETARY OF STATE
SECRETARY OF STATE L. W. BECHTOLD
Commissioner

NOTICE OF EMERGENCY RULE

RULE TITLE Federal Safety Standards Inspection Program

The attached rule is filed as an Emergency Rule. The facts and circumstances constituting the emergency are as follows:

Emergency promulgation of this rule is necessary to immediately implement certain provisions of Enrolled House Bill 1419 which went into effect June 6, 1986.

This legislation requires the Commissioner to:

- 1) Conduct a limited inspection of certain motor vehicles for compliance with federal standards prior to titling, and
- 2) Establish a fee for the limited inspection

These Emergency Legislative Rules:

- 1) Establish procedures for appointing agents to conduct such inspections on behalf of the Commissioner, and
- 2) Establish the fee for the inspection at \$15.00

Immediate promulgation of these rules is necessary to prevent substantial harm to the public interest by implementing the legislative mandate of House Bill 1419 to institute an inspection prior to the titling and registration of vehicles which do not meet Federal Safety Standards.


L. W. Bechtold
Commissioner

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(EMERGENCY)
WEST VIRGINIA LEGISLATIVE RULES
DEPARTMENT OF MOTOR VEHICLES
CHAPTER 17A-2
SERIES 21

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Title: Federal Safety Standards Inspection Program

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(EMERGENCY)
WEST VIRGINIA LEGISLATIVE RULES
DEPARTMENT OF MOTOR VEHICLES
CHAPTER 17A-2
SERIES 21

Title: Federal Safety Standards Inspection Program

Section 1. General

1.1 Scope - These legislative rules set forth the procedures for the inspection and issuance of a certificate of inspection prior to the initial application for the titling and registration of a motor vehicle not manufactured in accordance with the United States Motor Vehicle Safety Standards.

1.2 Authority - §17A-2-9 related to §17A-3A-1 et. seq.

1.3 Filing Date - June 9, 1986

1.4 Effective Date - June 9, 1986

Section 2. Application and Enforcement

2.1 Application - These rules apply to applicants for approval as an inspection station for compliance with federal safety standards and applicants for title and registration of motor vehicles not manufactured in accordance with United States Motor Vehicle Safety Standards.

2.2 Enforcement - Enforcement of these rules is vested with the Commissioner of Motor Vehicles or lawful designee.

Section 3. Inspection Station Appointment

3.1 Commissioner's Inspection - The Commissioner shall select and designate inspection stations to conduct inspection and approval of a motor vehicle not manufactured in accordance with federal safety standards prior to issuance of a title and registration.

3.2 Criteria for Appointment - To be considered for appointment as a Federal Safety Standards Inspection Station an inspection station shall submit the following:

3.2.1 A copy of the applicant's valid certificate of appointment as an Official Inspection Station issued by the Superintendent of Public Safety, and

3.2.2 A notarized affidavit of the owner of the inspection station that the station has the equipment and personnel necessary to ascertain compliance with Federal Safety Standards.

3.3 Inspection Station Approval - The Commissioner shall issue each appointed inspection station a certificate of appointment. Such certificate shall be posted under glass in close proximity to the Certificate of Appointment as an Official Inspection Station.

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(Emergency)
Department of Motor Vehicles
Legislative Rule 17A-2
Series 21, Sec. 3

3.4 Approval Withdrawal - The Commissioner may withdraw an inspection station's designation upon receipt of evidence that the station does not have the equipment or personnel necessary to ascertain compliance with Federal Safety Standards, or is operating contrary to the public interest.

3.5 Inspection - The Commissioner reserves the right to inspect any designated inspection station for compliance with §17A-3A-1 et. seq., and these rules.

Section 4. Compliance Inspection

4.1 Inspection Fee - The fee for inspecting a vehicle for compliance with Federal Safety Standards shall be fifteen dollars (\$15.00).

4.2 Inspection Standards - Each vehicle shall be inspected for compliance with Federal Motor Vehicle Safety Standards as fully set forth in Title 49, Code of Federal Regulations Part 571.

4.3 Inspection Checklist - Compliance with each Federal Motor Vehicle Safety Standard shall be noted on the form prescribed by the Commissioner.

4.4 Issuance of Certificate of Inspection and Approval - Upon completion of the inspection and a finding that the vehicle appears to comply with all Federal Safety Standards noted on the inspection checklist, the inspection station inspector shall complete the certificate by signing the certificate, and indicating the date and inspection station location.

4.5 Completed Certificate - The completed checklist and attached certificate shall be given to the vehicle owner. The inspection station shall retain one copy for its records.

4.6 Disclaimer - Pursuant to the provisions of §17A-3A-1(b)(1), the inspection and certification performed in accordance with these rules may not be construed as state approval of the modifications performed to bring the vehicle into compliance with Federal Standards, or as a state certification that the vehicle is free of hazardous conditions.

4.6 Approval Not Granted - In accordance with the provisions of §17A-4A-1(b)(2), the inspection fee prescribed by Section 4.3 shall be submitted to the inspection station prior to each inspection.

Section 5. Severability

In the event any portion of these rules shall be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of these rules.

KEN HECHLER
Secretary of State

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STATE OF WEST VIRGINIA
SECRETARY OF STATE
Charleston 25305

July 10, 1986

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE


AGENCY: Department of Motor Vehicles

RULE: Series 21 Federal Safety Standards Inspection Program

DATE FILED AS AN EMERGENCY RULE: June 9, 1986

DECISION NO. 7-86

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.


KEN HECHLER
Secretary of State

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STATE OF WEST VIRGINIA
SECRETARY OF STATE

Charleston 25305

DECISION

Emergency Rule Decision
(ERD 7-86)

AGENCY: Department of Motor Vehicles
RULE: Series 21 Federal Safety Standards Inspection
Program

DATE FILED AS AN EMERGENCY RULE: June 9, 1986

- par. 1 The Department of Motor Vehicles has filed as an emergency rule a new rule, Series 21 titled Federal Safety Standards Inspection Program.
- par. 2 The rule establishes the criteria and procedures to be designated as Federal Safety Standards Inspection Station, as well as the fee to be charged for such inspections.
- par. 3 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. 4 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. 5 (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. 6 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. 7 The Department of Motor Vehicles has filed this emergency rule with supporting documents with the Secretary of State on June 9, 1986 and with the LRMRC prior to the issuance of this decision. It is, therefore, the determination of the Secretary of State that the Department of Motor Vehicles has complied with the procedural requirements of WV Code 29A-3-15.

par. 8 (B) Statutory Authority: WV Code 17A-2-9 reads:

§17A-2-9. Same -- Powers and Duties; rules and regulations; seal.

(a) The commissioner is hereby vested with and is charged with the duty of observing, administering and enforcing the provisions of this chapter and of all laws the enforcement of which is now or hereafter vested in the department: Provided, however, that nothing in this chapter shall deprive the public service commission of West Virginia of any of the duties or powers now vested in it with regard to the regulation of motor vehicle carriers.

(b) The commissioner is hereby authorized to adopt and enforce such rules and regulations as may be necessary to carry out the provisions of this chapter and any other laws the enforcement and administration of which are vested in the department.

(c) The commissioner may adopt an official seal for the use of the department. (1951, c. 129.)

par. 9 WV Code 17A-3A-1(b) reads:

(b) The commissioner shall conduct limited inspections of all such vehicles described above, in accordance with the following:

(1) On the occasion of the initial application for a title and registration as part of any presale inspection mandated by state law, the vehicle shall be inspected for compliance with federal safety standards or conditions which render the vehicle unsafe or hazardous during normal use. This inspection is in addition to the standard vehicle inspection and may not be construed as state approval of the modifications performed to bring the vehicle into compliance with federal standards or as a state certification that the vehicle is free of hazardous conditions. The state will issue a certificate of inspection and approval if the vehicle appears to comply with all federal safety standards. This certificate must be submitted as part of the initial application for a title and registration in this state. Denial of such a certificate is without prejudice to reapplication after the detected noncompliance or unsafe or hazardous condition has been corrected; and

(2) For each vehicle, each time review is sought, the applicant must submit a fee in an amount determined by the commissioner to be sufficient to cover the costs of the presale inspection mandated by this section.

(c) The provisions of this section apply to the initial sale or registration of a vehicle with this state, without regard to whether it has previously been sold or registered in another state.

par. 10 It is the determination of the Secretary of State that the Department of Motor Vehicles has not exceeded its statutory authority by adopting this rule.

par. 11 (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. 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 Department of Motor Vehicles claims that this proposal is "to prevent substantial harm to the public interest."

par. 14 The facts and circumstances as presented by the Department of Motor Vehicles are as follows:

(A) The 1986 Legislature in HB 1419 requires a limited inspection of motor vehicles not manufactured in accordance with U. S. Motor Vehicle Safety Standards.

(B) The intent of HB 1419 is to require an inspection of these federally exempt vehicles prior to their use on West Virginia highways.

(C) HB 1419 also requires the DMV to establish a fee for such inspections.

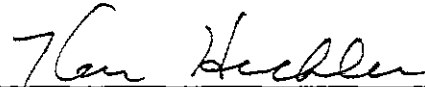
par. 15 The DMV inspection requirements are to prevent unsafe vehicles from utilizing the highways with possible injury to the public.

par. 16 There is no specific data presented to judge the degree of harm which may result from such vehicles nor the number of such vehicles involved.

par. 17 As cited in ERD 6-86, par. 17, 18, 19 and 24, an emergency rule requires a lesser standard of evidence when the purpose of the rule is to prevent a life or injury threatening situation.

par. 18 This office chooses, in such situations, to side with caution when protection of life is involved as a concern addressed in an emergency rule.

- par. 19 The Secretary of State determines that the Department of Motor Vehicles has demonstrated the need to make effective this proposal.
- par. 20 It is the decision of the Secretary of State that this proposal by the Department of Motor Vehicles is in procedural compliance with WV Code 29A-3-15; does not exceed the statutory authority of the Department of Motor Vehicles; and that the facts and circumstances presented constitute an emergency. Therefore, the Secretary of State decides that this emergency rule should be approved.
- par. 27 This decision shall be cited as Emergency Rule Decision 7-86 or ERD 7-86 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 Motor Vehicles, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER
SECRETARY OF STATE

FILED IN THE OFFICE OF
THE SECRETARY OF STATE

Entered _____

THIS DATE

July 11, 1986

ADMINISTRATIVE LAW DIVISION