

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

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FILED
1990 SEP 28

NOTICE OF AN EMERGENCY RULE

AGENCY: Secretary of State TITLE NUMBER: 153

CITE AUTHORITY: §3-1A-6; 42 U.S.C. §1973ff-1

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: 23

TITLE OF RULE BEING FILED AS AN EMERGENCY: Absentee Voting by Military Voters who are Members of Reserve Units Called to Active Duty

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:

West Virginia residents called to active service for Operation Desert Shield may not be able to exercise their voting rights under present provisions of absentee voting law without this rule being filed as an emergency.

Use Additional Sheets If Necessary.

Ken Hechler

2.30

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Absentee Voting by Military Voters who are Members of Reserve Units Called to Active Duty

Type of Rule: Legislative Interpretive Procedural

Agency Secretary of State Address State Capitol
Charleston, WV 25305

1. Effect of Proposed Rule:	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services	N/A	N/A	N/A	N/A	
Current Expense	N/A	N/A	N/A	N/A	
Repairs and Alterations	N/A	N/A	N/A	N/A	
Equipment	N/A	N/A	N/A	N/A	
Other	N/A	N/A	N/A	N/A	

2. Explanation of above estimates:

3. Objectives of these rules:

West Virginia residents who are called to active service may not be able to exercise their voting rights under present provisions of absentee voting law.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

None

C. Economic Impact on Citizens/Public at Large.

None

Date: September 29, 1990

Signature of Agency Head or Authorized Representative

Tom Hubler

DATE: September 29, 1990

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Mary Ratliff, Deputy Secretary of State

EMERGENCY RULE TITLE: Absentee Voting by Military Voters Who are Members of Reserve Units Called to Active Duty

1. Date of filing: _____

2. Statutory authority for promulgating the emergency rule: §3-1A-6; 42 U.S.C. §1973ff-1

3. Date of filing of proposed legislative rule: _____

4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?

Adopts new language

5. Has the same or similar emergency rule previously been filed and expired?

No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.

West Virginia residents called to active service for Operation Desert Shield may not be able to exercise their voting rights under present provisions of absentee voting law.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

Time limits for absentee voting are established by W. Va.

Code, Article Three, Chapter 3

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

Federal law requires that military voters have reasonable
ballot access. Under current conditions, that access will
not be available without this rule.

TITLE 153
LEGISLATIVE RULE
SECRETARY OF STATE

SERIES 23
ABSENTEE VOTING BY MILITARY VOTERS WHO ARE MEMBERS OF RESERVE
UNITS CALLED TO ACTIVE DUTY

§153-23-1. General.

1.1. Scope. -- This rule provides for absentee voting procedures to be used when a member of the reserves, who has been called to active duty, applies for an absentee ballot and is unable to receive and return that ballot within the time required using normal procedures.

1.2. Authority. -- W.Va. Code §3-1A-6; also see 42 U.S.C. §1973ff-1.

1.3. Filing date. --

1.4. Effective date. --

§153-23-2. Absentee voting for activated reservists.

2.1. Any registered voter who is a member of a reserve unit that is called to active duty as a result of an order of the President of the United States and who, as a result of that order, will not be able to vote in any primary, general, or special election held in this state because of being unable to vote in person or by normal procedures for absentee voting, shall be allowed to cast an absentee ballot by mail or by voting in person at the office of the circuit clerk, in the county where registered, as provided for in this rule.

2.2. For the purposes of this rule, a reserve unit includes all units that can be called to active duty as part of the United States Army, Navy, Air Force, Marine Corps or Coast Guard.

§153-23-3. Procedures.

3.1. Any person who has been ordered to active duty, pursuant to the terms of section two of this rule, may apply to the circuit clerk, in the county where registered, to cast an absentee ballot by completing a federal postcard application (FPCA) or a state Application for Voting an Absent Voters Ballot and Form A-8, entitled "Affidavit of Military Voter Called to Active Service Requesting to Vote Absentee."

3.2. The circuit clerk shall examine the application and the affidavit and if the voter requests that an absentee ballot be sent to the voter's home address, then a ballot shall be sent to the address provided by the voter in the affidavit and shall not be challenged for the reason of being returned from

within the county. The request shall, in all other respects, be handled as provided for in §3-3-5 of the West Virginia Code.

3.3. If the voter requests permission to cast an absentee ballot in person, and the application is made at the time within forty-two (42) days of the election, then the voter shall be allowed to vote at the circuit clerk's office pursuant to the provisions of §3-3-3 of the West Virginia Code.

AFFIDAVIT OF MILITARY VOTER CALLED TO ACTIVE SERVICE
REQUESTING TO VOTE ABSENTEE

I, _____, a registered voter in Precinct _____ in
the County of _____, do solemnly swear or affirm under penalty
of perjury, that I am required to be absent from the county in which I am
registered during the entire period of absentee voting in the office of the
Circuit Clerk, _____,
dates

and during the hours which polls are open on election day on _____.
date

I further swear or affirm that, because I have been called to active
service in the _____ (branch of service) on _____,
date

I will be unable to vote by mail at my service address, therefore, I request:
(Check one)

_____(1) The official absentee ballot be mailed to my home address within the
county at _____ (address/city) before my departure,
and that I will return the ballot from within the county before my departure to
active service.

OR

_____(2) To vote an absentee ballot in person at the clerk's office before my
departure because I will be unable to receive and return a ballot by mail
within the time allowed.

Signature of Voter

Subscribed and sworn before me this _____ day of _____, 19____.

Notary Public or Circuit Clerk

My commission expires _____.

(seal) _____



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

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OFFICE OF THE ATTORNEY GENERAL
STATE

ROGER W. TOMPKINS
ATTORNEY GENERAL

(304) 348-2021

CONSUMER HOTLINE
(800) 368-8808

November 9, 1990

NOTICE OF EMERGENCY RULE DECISION BY THE ATTORNEY GENERAL

AGENCY: Secretary of State

RULE: New Rule, Series 23;
Absentee Voting by Military Voters
Who are Members of Reserve Units
Called to Active Duty

DATE FILED AS AN EMERGENCY RULE: September 28, 1990

DECISION NO. 46-90

Following review under W. Va. Code § 29A-3-15b, it is the decision of the Attorney General that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office or the Secretary of State's office.

ROGER W. TOMPKINS
ATTORNEY GENERAL



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

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REC'D NOV -9 PM 4:40
OFFICE OF THE ATTORNEY GENERAL
STATE

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(800) 368-8808
(ERD 46-90)

EMERGENCY RULE DECISION

AGENCY: Secretary of State

RULE: New Rule, Series 23;
Absentee Voting by Military Voters
Who are Members of Reserve Units
Called to Active Duty

DATE FILED AS AN EMERGENCY RULE: September 28, 1990

The Secretary of State has filed a new Series 23 as an emergency.

West Virginia Code § 29A-3-15b requires the Attorney General to review all emergency rules filed by the Secretary of State after May 13, 1987. This review requires the Attorney General to determine: (1) if the Secretary of State has exceeded the scope of its statutory authority in promulgating the emergency rule; (2) whether an emergency exists justifying the promulgation of the rule; and (3) if the rule was promulgated in compliance with the provisions of W. Va. Code § 29A-3-15.

Following said review, the Attorney General shall issue a decision as to whether or not such emergency rule should be disapproved [§ 29A-3-15b(a)].

STATUTORY AUTHORITY

§ 3-1A-6. Election rules; powers and duties of secretary of state; exercise of powers by appointees.

The secretary of state shall be the chief election official of the state. He shall have authority, after consultation with the state election commission, of which he is a member, to make, amend and rescind such rules, regulations and orders as may be necessary to carry out the policy of the Legislature, as contained in this chapter.

It is the determination of the Attorney General that the Secretary of State has not exceeded the scope of its statutory authority in promulgating this emergency rule.

EMERGENCY

W. Va. Code § 29A-3-15(g) provides:

(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.

The facts and circumstances constituting the emergency, as presented by the Secretary of State are as follows:

West Virginia residents called to active service for Operation Desert Shield may not be able to exercise their voting rights under present provisions of absentee voting law without this rule being filed as an emergency.

Military personnel must be afforded reasonable access to the ballot in accordance with 42 U.S.C. § 1973ff-1. Under the current condition military personnel must respond to the immediate call to service issued by the president of the United States. In some instances the military personnel called to respond to the President's command must do so quickly which does not allow the members of the armed forces time to comply with the notice requirements in West Virginia Code Chapter 3, Article 3 in order to preserve their right to vote.

Military personnel may not be able to vote from their service address. Moreover, because of time constraints, military personnel may not be able to vote in person at the circuit clerk's office of their county of residence no later than 15 days prior to election as prescribed by W. Va. Code § 3-3-3. Additionally, military personnel may not be able to vote by mail pursuant to W. Va. Code §§ 3-3-2 and 3-5-5 due to time constraints and/or the voter's need to mail the ballot from the county of his residence due to the nature of the voter's circumstances as a result of the voter obligation of military service. Therefore, in order to preserve military personnel's right to vote while they respond to the orders of the President of the United State's, it is necessary that the emergency rule requested by the Secretary of State be filed as presented.

It is the determination of the Attorney General that these circumstances demonstrate the existence of an emergency justifying the promulgation of the rule.

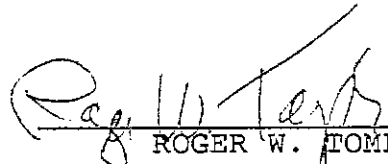
PROCEDURAL COMPLIANCE

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 facts and circumstances constituting the emergency, in the State Register and forthwith with the Legislative Rule-Making Review Committee.

The Secretary of State filed this emergency rule with supporting documents with the Attorney General on October 10, 1990, in the State Register on September 28, 1990 and with the Legislative Rule-Making Review Committee on October 1, 1990. The required filings were accomplished within the forty-two day review period prescribed by W. Va. Code § 29A-3-15b.

It is the determination of the Attorney General that the Secretary of State has complied with the procedural requirements of W. Va. Code § 29A-3-15 for adoption of an emergency rule.

This decision shall be cited as Emergency Rule Decision 46-90 or ERD 46-90 and may be cited as precedent. This decision is available from the Attorney General's office or the Secretary of State's office, and has been filed in the State Register and with the Legislative Rule-Making Review Committee.



ROGER W. TOMPKINS
ATTORNEY GENERAL

Entered this 9th day of November, 1990.



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

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M E M O R A N D U M

TO: Legislative Rule-Making Review Committee
FROM: Dawn E. Warfield
Deputy Attorney General *DEW*
DATE: November 9, 1990
RE: Emergency Rule Decision

Enclosed for filing with the Committee are fifteen (15) copies of an Emergency Rule Decision by the Attorney General pursuant to W. Va. Code § 29A-3-15b, regarding the proposed legislative rules, Series 23, filed by the Secretary of State's office on September 28, 1990. The decision has been filed with the Secretary of State for publication in the State Register.

Additional copies of the decision are available from this office or from the Secretary of State's office.

DEW/kc

Enclosures