



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

DARRELL V. McGRAW, JR.
ATTORNEY GENERAL

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE (304) 558-2021
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September 14, 1998

NOTICE OF EMERGENCY RULE DECISION BY THE ATTORNEY GENERAL

AGENCY: Secretary of State

RULE: New Rule, Title 153, Series 30;
Use of Electronic Signatures by State Agencies

DATE FILED AS AN EMERGENCY RULE: September 3, 1998

DECISION NO. 11-98

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 from the Secretary of State's office.

DARRELL V. McGRAW, JR.
ATTORNEY GENERAL

By *Dawn E. Warfield*
DAWN E. WARFIELD
DEPUTY ATTORNEY GENERAL

pursuant to article three, chapter twenty-nine-a of this code. (Emphasis added.)

It is the determination of the Attorney General that this emergency rule does not exceed the scope of the law authorizing or directing the promulgation thereof.

II. EMERGENCY

W. Va. Code § 29A-3-15(f) [1994] provides:

For the purposes of this section, an emergency exists when the promulgation of an emergency rule is necessary (1) for the immediate preservation of the public peace, health, safety or welfare, (2) to comply with a time limitation established by this code or by a federal statute or regulation, or (3) to prevent substantial harm to the public interest.

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 Attorney General that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

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

The Legislature indicated its mandate for early implementation of the agency use of electronic signatures through its delegation of authority to promulgate emergency rules. Several state agencies are now poised to begin implementation of agency use of electronic signatures, with significant immediate cost savings to the state. However, without the emergency rule, development cannot begin before April, 1999.

With regard to the timeliness of the filing of this emergency rule, W. Va. Code § 29A-3-15(a) (1994) provides, in part:

An emergency rule shall be effective for not more than fifteen months and shall expire earlier if any of the following occurs:

(1) The . . . attorney general, acting under the authority provided for in section fifteen-b of this article, disapproves the emergency rule because: (A) The emergency rule . . . exceeds the scope of the law authorizing or directing the promulgation thereof; (B) An emergency does not exist justifying the promulgation of the emergency rule; or (C) the emergency rule was not promulgated in compliance with the provisions of this section. . . . When the supporting statute specifically directs an agency to promulgate an emergency rule, or specifically finds that an emergency exists and directs the promulgation of an emergency rule, the emergency rule may not be disapproved pursuant to the authority granted by paragraph (B) of this subdivision. . . . (Emphasis added.)

It is the determination of the Attorney General that under the quoted statute, it is unnecessary to find the existence of an emergency as defined by W. Va. Code § 29A-3-15(f), because the legislature in W. Va. Code § 39-5-4(a) specifically authorized the promulgation of these rules as emergency rules.

III. PROCEDURAL COMPLIANCE

W. Va. Code § 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such emergency rule, together with a statement of the facts and circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC). A notice of such filing must also be published in the State Register.

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 Attorney General shall rule in favor of procedural compliance.

The Secretary of State filed this emergency rule and supporting documents with the Secretary of State on September 3, 1998, with the Attorney General on September 4, 1998, and with the Legislative Rule-Making Review Committee on **September 3, 1998**. Notice of the filing of the emergency rule and of a public comment period on the proposed rule were published in the State Register on September 11, 1998.

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 11-98 or ERD 11-98 and may be cited as precedent. This decision is available from the Attorney General's office or from the Secretary of State's office, and has been filed with the Secretary of State and with the Legislative Rule-Making Review Committee.

DARRELL V. McGRAW, JR.
ATTORNEY GENERAL

By 
DAWN E. WARFIELD
DEPUTY ATTORNEY GENERAL

Entered this 14th day of September, 1998.



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MEMORANDUM

TO: Legislative Rule-Making Review Committee

FROM: Dawn E. Warfield
Deputy Attorney General *DEW*

DATE: September 14, 1998

RE: Emergency Rule Decision No. 11-98

Enclosed for filing with the Committee is a copy of an Emergency Rule Decision by the Attorney General pursuant to W. Va. Code § 29A-3-15b, regarding the proposed legislative rules, Title 153, Series 30, filed by the Secretary of State's office on September 3, 1998. The decision has been filed with the Secretary of State for publication in the State Register and for service upon members of the Committee.

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

DEW/psk

Enclosure