



STATE OF WEST VIRGINIA  
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February 8, 2008

**NOTICE OF EMERGENCY RULE DECISION  
BY THE OFFICE OF THE ATTORNEY GENERAL**

2008 FEB -8 PM 4:26  
RECEIVED  
SECRETARY OF STATE

AGENCY: Secretary of State

RULE: Title 153 CSR, Series 37  
Administration of The Address Confidentiality Program

DATE FILED AS AN EMERGENCY RULE: January 4, 2008

**DECISION NO. 1-08**

Following review under W. Va. Code § 29A-3-15b, it is the decision of the Attorney General that the above emergency rule is 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



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**MEMORANDUM**

TO: Legislative Rule-Making Review Committee

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

DATE: February 8, 2008

RE: Emergency Rule Decision No. 1-08

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 emergency rules, Title 153 CSR, Series 37, filed by the Secretary of State's office on January 4, 2008. 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.

Enclosure

**EMERGENCY RULE DECISION  
(ERD 1-08)**

AGENCY: Secretary of State

RULE: Title 153 CSR, Series 37  
Administration of The Address Confidentiality Program

DATE FILED AS AN EMERGENCY RULE: January 4, 2008

The Secretary of State has filed a new Series 37 as an emergency rule.

SECRETARY OF STATE

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W. Va. Code § 29A-3-15b requires the Attorney General to review all emergency rules filed by the Secretary of State after March 8, 1986. This review requires the Attorney General 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.

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

- (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).

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 with supporting documents with the Secretary of State and with the LRMRC on January 4, 2008.

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.

- (B) Statutory Authority -- W. Va. Code § 48-28A-110 provides, in pertinent part:

*The Secretary of State is hereby directed to propose legislative rules and emergency rules implementing the provisions of this article in accordance with the provisions of article three, chapter twenty-nine-a of this code.*

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

(C) Emergency -- W. Va. Code § 29A-3-15(f) defines "emergency" as follows:

*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 as presented by the Secretary of State are as follows:

*The Code of West Virginia was amended by adding a new article designated as § 48-28A-110 et. seq. that created the Address Confidentiality Program. The purpose of the legislation is to enable state and local agencies to respond to requests for public records without disclosing the location of a victim of domestic abuse, sexual assault, or stalking. Specifically, it states that the Secretary of State shall provide address confidentiality for victims and that state and local agencies will accept this address as a substitute for a residential or mailing address.*

*This legislative rule is written to facilitate the administration of the Address Confidentiality Program. The rule describes the manner and process for application to the program by prospective participants and applications assistants. The rules further includes sections on cancellation of program certification, exercise of program participant privileges, program participation renewal, application for agency disclosure requests, disclosure to law enforcement, service of process and establishes uniform statewide procedures for maintaining the confidentiality of a program participant's name and address information in voting records.*

*The Address Confidentiality Program legislation became effective on November 19, 2007. The law mandates under West Virginia Code § 48-28-10, that the Secretary of State propose legislative rules and emergency rules to operate the program. On the same date that this emergency rule is filed, the Secretary of State is filing the legislative rule for the required thirty (30) day comment period and will then attempt to have the*

*legislative rule enacted during the 2008 legislative session. In the meantime, it is necessary for this emergency rule to be enacted so that the Secretary of State can begin training and registering Application Assistants. These Application Assistants will then be able to recommend that victims of domestic violence should be accepted into the Address Confidentiality Program, so that the victims' residential address will be protected and they will be afforded an opportunity to vote under the protection of the Program. It is important that this emergency rule be enacted so that the Secretary of State has time to accept victims of domestic violence into the program before the primary election in 2008.*

It is the determination of the Attorney General that this proposal qualifies under the definition of an emergency as defined in § 29A-3-15(f), "for the immediate preservation of the public peace, health, safety or welfare," and to "prevent substantial harm to the public interest." In addition, the Legislature specifically authorized the promulgation of emergency rules to implement the statute by W. Va. Code § 48-28A-110, quoted above.

This decision shall be cited as Emergency Rule Decision 1-08 or ERD 1-08 and may be cited as precedent. This decision is available from the Secretary of State or the Attorney General's Office, and has been filed with the Secretary of State and the Legislative Rule Making Review Committee.

DARRELL V. MCGRAW, JR.  
ATTORNEY GENERAL

By   
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DAWN E. WARFIELD  
DEPUTY ATTORNEY GENERAL

Entered this 8th day of February, 2008.