

OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA



Betty Ireland
Secretary of State

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE 7/18/2005
ADMINISTRATIVE LAW DIVISION

July 18, 2005

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Statewide Addressing and Mapping Board

RULE: New Rule, 169CSR4, Standard Fees for Planimetric Elevation Data

DATE FILED AS AN EMERGENCY RULE: June 6, 2005

DECISION NO. 4-05

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.


BETTY IRELAND
Secretary of State

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, West Virginia 25305

EMERGENCY RULE DECISION
(ERD 4-05)

AGENCY: Statewide Addressing & Mapping Board
RULE: New rule, 169CSR4, Standard Fees for Planimetric Elevation Data
FILED AS AN EMERGENCY RULE: June 6, 2005

- par. 1 The West Virginia Statewide Addressing & Mapping Board (Board) has filed the above new 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 Board filed this emergency rule with supporting documents with the Secretary of State June 6, 2005 and with the LRMRC June 6, 2005.
- par. 7 It is the determination of the Secretary of State that the Board 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 §24E-1-9 reads:

§24E-1-9. Standard fees for maps, compilations or other works.

(a) The board is hereby authorized to propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to establish standard fees for copies or use of any maps, compilations or other works that may be created as a result of the statewide addressing and mapping intended to be accomplished by this article. Those rules must exempt from the payment of fees, however, any entity providing twenty-five percent or more of the funding to the statewide addressing and

mapping fund created by section five of this article. Those rules also must exempt from the payment of the fees county commissions obtaining the maps, compilations or other works for use in its enhanced emergency telephone system established under article six, chapter twenty-four of this code. The board may propose other exemptions in such rules. The otherwise payable standard fees must be reasonable and must, to the extent possible, be based on cost. Until the termination of the board in accordance with section eleven of this article, any fees are to be payable to the board and the board shall deposit those fees in the West Virginia statewide addressing and mapping fund created by section five of this article. Emergency rules are specifically authorized for the purposes of this section.

(b) Prior to the distribution or use of any maps, compilations or other works created as a result of the statewide addressing and mapping intended to be accomplished by this article, the board shall propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, establishing the conditions and requirements governing the distribution of those works, including provisions ensuring the effective distribution of those works to persons with a legitimate need to know, but respecting, where possible, any reasonable expectations of privacy of the information contained in those works, such as the names, addresses and locations of the citizens of the state. The rules proposed for this purpose must be consistent with the West Virginia freedom of information act, article one, chapter twenty-nine-b of this code. Emergency rules are specifically authorized for this purpose

par. 9 It is the determination of the Secretary of State that the Board has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (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. 11 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. 12 The facts and circumstances as presented by the Board are as follows:

Please consider this memorandum to be the Board's statement of the facts & circumstances constituting an emergency pursuant to W. Va. Code §29A-3-15 such that the Board may promulgate the emergency rules filed. Please note that the West Virginia legislature has specifically and expressly authorized that these rules may be filed as emergency rules. See W. Va. Code §24E-1-9(b).

As specifically required by the Legislature, the emergency rules govern the fees for certain data (in this case, namely, Planimetric elevation data) produced by the

statewide addressing & mapping project. other data specifically created for the project, such as hydrology, roads, railroads, structures or other planimetrics, have not yet been authorized for public release by the Board.

An emergency exists within the meaning of W. Va. Code §29A-3-15(f). First the emergency rules are necessary for the immediate preservation of the public peace, safety or welfare. Second, the emergency rules are necessary to prevent substantial harm to the public interest.

Specifically, the data includes the most comprehensive, current and accurate elevation data available for the State of West Virginia. The Planimetric elevation data were originally created with the cooperation of, and for the internal use of, the West Virginia Department of Transportation and its contractors. However, outside engineering firms working on a variety of public and private projects have requested immediate use of the data to use in their planning & design. External demand for the planimetric elevation data was unanticipated, and has been substantial and growing. The data could aid, for example, in non-WVDOT construction projects that would prevent or reduce future flooding, or support the development of local infrastructure and economic development, such as for water or sewer lines, etc. Any delay in releasing the data will serve no purpose, as data will become rapidly outdated. On the other hand, immediate release of the data, under reasonable standard fees as required by the Legislature would be in the public interest.

par. 13 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). . . mandated by the Legislature, "immediate preservation of the public peace, safety or welfare" & "prevent substantial harm to the public interest."

par. 14 This decision shall be cited as Emergency Rule Decision 4-05 or ERD 4-05 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia Statewide Addressing & Mapping Board, the Attorney General and the Legislative Rule Making Review Committee.


BETTY IRELAND
Secretary of State

Entered _____

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE 7/18/2005
ADMINISTRATIVE LAW DIVISION