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July 5, 2012

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia Board of Pharmacy

RULE: Amendments, 15CSR11, Ephedrine and Psuedoephedrine Control

DATE FILED AS AN EMERGENCY RULE: June 8, 2012

DECISION NO. 10-12

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.

NATALIE E. TENNANT
Secretary of State

EMERGENCY RULE DECISION
(ERD 10-12)

AGENCY: West Virginia Board of Pharmacy
RULE: Amendments, 15CSR11, Ephedrine and Psuedoephedrine Control
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- par. 1 The West Virginia Board of Pharmacy (Board) has filed the above amendment to an existing 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 8, 2012 and with the LRMRC June 8, 2012.
- 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 §60A-9-6 reads:

§60A-10-6. Registration to sell, manufacture or distribute products; rule-making authority.

The State Board of Pharmacy shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to require that every wholesaler, manufacturer or distributor of any drug product containing as their single active ingredient ephedrine or pseudoephedrine or a substance identified on the supplemental list provided for in section seven of this article shall obtain a registration

and permit issued by the State Board of Pharmacy to sell, distribute or transfer the product containing as their single active ingredient ephedrine, pseudoephedrine or phenylpropanolamine.

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.

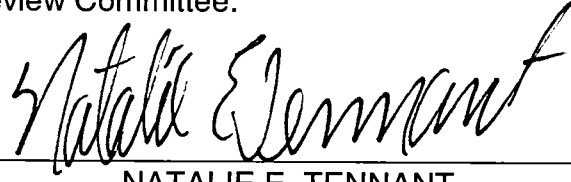
par. 12 The facts and circumstances as presented by the Board are as follows:

SB 437 (2012), effective June 8, 2012. makes changes to the Methamphetamine Laboratory Eradication Act. Among other things, it requires presentation and electronic reporting of government-issued photo identification to purchase the restricted products. and transitions reporting from sending the required information to the electronic PSE Database maintained by the Board, to reporting to a multi-state electronic logbook. As such. these modifications add a definition of .. Government-issued photo identification card" and make changes to the definition of ..schedule V pseudoephedrine products'.. clarify reporting requirement, and clarify reporting to the current electronic database prior to transition to a new database on January 1, 2013. These rules are necessary to clarify the new requirements for restricted products. and information that must be reported. The ongoing substance abuse issues in this State and our surrounding states require every effort we can reasonably and appropriately make to give dispensers and law enforcement the appropriate tools they need to fight illegal methamphetamine laboratories supplied by the diversion of pseudoephedrine-containing products. without these clarifications, wholesalers have questions about the products restricted (due to changes in definitions). and the reporting dispensers have questions about exactly they must report.

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). . . "immediate preservation of public peace, health, safety or welfare" and "prevent substantial harm to the public interest

par. 14

This decision shall be cited as Emergency Rule Decision 10-12 or ERD 10-12 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia Board of Pharmacy, the Attorney General and the Legislative Rule Making Review Committee.



NATALIE E. TENNANT
Secretary of State

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