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January 2, 2014

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: WV State Board of Registration for Professional Engineers

RULE: Amendment, 7CSR1, West Virginia Board of Registration for Professional Engineers

DATE FILED AS AN EMERGENCY RULE: December 27, 2013

DECISION NO. 1-14

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.

A handwritten signature in cursive script that reads "Natalie E. Tennant".

NATALIE E. TENNANT
Secretary of State

EMERGENCY RULE DECISION
(ERD 1-14)

AGENCY: WV State Board of Registration for Professional Engineers
RULE: Amendment, 7CSR1, West Virginia Board of Registration for Professional Engineers

FILED AS AN EMERGENCY RULE: December 27, 2013

- par. 1 The WV Board of Registration for Professional Engineers (Board) has filed the above amendments 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 December 27, 2013 and with the LRMRC December 27, 2013.
- 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 §30-13-15(e) reads:

(e) In the event that examination requirements, test administration procedures, scoring or testing methods are modified by a board-approved testing entity providing standard tests for use by the board, the board has the authority to promulgate emergency rules to adopt and reflect those changes.

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:

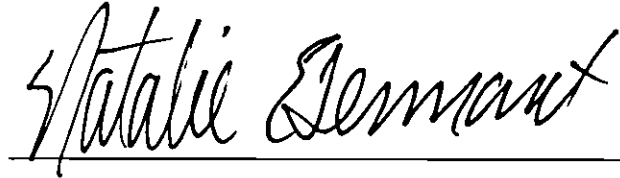
Significant changes at the national level affect the current examination of Engineering Interns and take effect January 1, 2014. This is just the start of the transition to computer-based testing, which will completely change the approval process for applicants for engineering examination and licensure. To accommodate those changes, the Legislature, in S.B. 401 which passed on April 13, 2013 and took effect July 1, 2013, authorized the West Virginia Board of Registration for Professional Engineers (PEs) to promulgate emergency rules adopting and reflecting national modifications to the licensure process. See W.Va. Code 30-13-15(e). The emergency rules submitted herewith implement the statutory changes that took effect in July and guide those seeking certification as an Engineer Intern (EI) and licensure and renewal of licensure as a P.E. Legislative rules could not be timely filed for review during the 2014 legislative session, and only emergency rules would allow the Board's rules to reflect the January 2014 change at the national level.

The Board has consulted staff with the Secretary of State's office so that the amended Series 1 rules would be in effect on or about January 1, 2014. The Board and the rule-making division of that office are also discussing how the Board can accomplish a more thorough rule revision while keeping these emergency provisions relating to the certification of engineer interns and the new examination provisions in effect.

It is in the public interest to have engineering students become certified as engineer interns (EJ), the FE exam is required both for EI certification and licensure as a professional engineer, and the Board's rules need to adequately inform potential licensees of the new procedures for examination and licensure.

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 "to prevent substantial harm to the public interest"

par. 14 This decision shall be cited as Emergency Rule Decision 1-14 or ERD 1-14 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the WV State Board of Registration for Professional Engineers, the Attorney General and the Legislative Rule Making Review Committee.



NATALIE E. TENNANT

Secretary of State

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