



Office of the Secretary of State
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, West Virginia 25305

Natalie E. Tennant
Secretary of State
State of West Virginia

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OFFICE WEST VIRGINIA
SECRETARY OF STATE
Telephone: (304) 558-6000
1-866-SOS-VOTE
Fax: (304) 558-0900
www.wvsos.com

August 11, 2014

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Fire Commission

RULE: Amendment, 87CSR8, Volunteer Firefighters' Training, Equipment and Operating standards

DATE FILED AS AN EMERGENCY RULE: July 1, 2014

DECISION NO. 18-14

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.

NATALIE E. TENNANT
Secretary of State

EMERGENCY RULE DECISION
(ERD 18-14)

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- par. 1 The Fire Commission (Commission) 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 Commission filed this emergency rule with supporting documents with the Secretary of State July 1, 2014 and with the LRMRC July 1, 2014.
- par. 7 It is the determination of the Secretary of State that the Commission 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 §29-3-5d reads:

§29-3-5d. Volunteer firefighters' training.

(a) On or before July 30, 2012, the State Fire Commission shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, to establish training requirements for firefighters which:

(1) Provide for:

(A) Minimum training levels for rescue and fire fighting;

(B) Minimum levels of equipment needed to protect life and property within fire service areas;

© Minimum performance standards the departments must meet in response times, communications, levels of water flow and pressure; and

(D) Other performance measures as considered necessary to meet the overall goals of improved fire prevention and control.

(2) Allow the training to be offered in segments, blocks or modules: Provided, That no firefighter may engage in fire fighting activities, except in response to wildland fires, until he or she has completed all firefighter one training: Provided, however, That support members may provide ancillary assistance to firefighters as defined by the rule;

(3) Provide for online training;

(4) Allow testing to be done in person or online; and

(5) Establish the testing requirements which include:

(A) If the individual is required to test in person, then the tests must be given regionally at various times throughout the year; or

(B) If the individual is authorized to test online, then the requirements for online testing must be established.

(b) The State Fire Commission may promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code to effectuate the provisions of this section.

© The training policies in effect as of the effective date of the enactment of this section during the Regular Session of 2012 will remain in effect until superceded by the emergency rule or legislative rule promulgated pursuant to this section.

par. 9 It is the determination of the Secretary of State that the Commission 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 Commission are as follows:

The existing Rule uses 2008 curriculum for Firefighter I and II training These curriculum have gone out of circulation and the educational providers are no longer able to get texts and training materials. The Fire Commission has already approved the amended curriculum and gone through the public comment period with no modification. If the emergency rule is not permitted, basic firefighting education in the state will be halted until a full and final

rule is effective July 1, 2015.

Without basic firefighting education available throughout the state the general public safety of our citizens is put at extreme risk. Further, more than 400 fire departments in and around the state will be unable to employ or retain entry level members until the final process of rulemaking is complete.

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 18-14 or ERD 18-14 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Fire Commission.



NATALIE E. TENNANT
Secretary of State

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