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June 2, 2015

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: WV State Board of Registration for Professional Engineers

RULE: Amendment, 7CSR1, Examination, Licensure and Practice of Professional Engineers

DATE FILED AS AN EMERGENCY RULE: May 11, 2015

DECISION NO. 3-15

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 3-15)

AGENCY: WV State Board of Registration for Professional Engineers
RULE: Amendment, 7CSR1, Examination, Licensure and Practice of Professional Engineers

FILED AS AN EMERGENCY RULE: May 11, 2015

- par. 1 The WV State Board of Registration for Professional Engineers (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 May 11, 2015 and with the LRMRC May 11, 2015.
- 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 30-13-18(e) reads:

(e) The board shall promulgate emergency rules pursuant to section fifteen, article three, chapter twenty-nine-a of this code to implement the provisions of this section.
- 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:

In 2015, significant changes were enacted with regard to the renewal process (SB389, which was effective from passage) In order to implement the new provisions this renewal season, emergency rules were specifically required in WV Code 30-13-18(e).

The 2015 amendment to WV Code 30-13-18 also requires reinstatement of any former registrant with a non-practicing status, which is also addressed as integral to the renewal process.

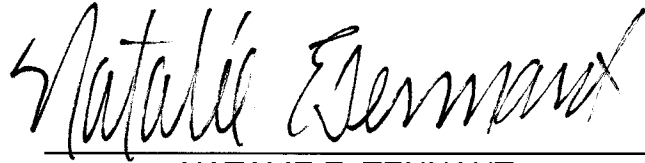
The Legislature has determined there is a need to regulate the practice of engineering, including the licensure of professional engineers and the certification of engineer interns in order to protect the health, safety and welfare of the public. These statutory procedures were amended in both 2013 and 2015. To further the public interest of licensure and certification, the Board's rules need to adequately inform potential licensees of the procedures to be followed for examination, licensure and renewal.

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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"

par. 14

This decision shall be cited as Emergency Rule Decision 3-15 or ERD 3-15 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 Engineer.



NATALIE E. TENNANT
Secretary of State

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