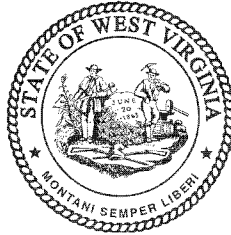


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May 31, 2016

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Fire Marshal

RULE: New Rule, 103CSR4, Regulation of Fireworks and Related Explosive Materials

DATE FILED AS AN EMERGENCY RULE: May 12, 2016

DECISION NO. 1-16

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 1-16)

AGENCY: Fire Marshal

RULE: New Rule, 103CSR4, Regulation of Fireworks and Related Explosive Materials

DATE FILED AS AN EMERGENCY RULE: May 12, 2016

- par. 1 The Fire Marshal 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 Fire Marshal filed this emergency rule with supporting documents with the Secretary of State May 12, 2016 and with the LRMRC May 12, 2016.
- par. 7 It is the determination of the Secretary of State that the Fire Marshal 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 §29-3E-8(a) reads:

§29-3E-8. State Fire Marshal's Rule-making Authority.

(a) The State Fire Marshal may promulgate emergency rules and shall propose legislative rules for promulgation, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the provisions of this article, including:

(1) Adopting by reference the most recent edition of APA Standard 87-1;

- (2) Adopting by reference the most recent edition of NFPA 1123, Code for Fireworks Display;**
- (3) Adopting by reference NFPA 1124, code for the manufacture, transportation, storage and retail sales of fireworks and pyrotechnic articles;**
- (4) Adopting by reference the most recent edition of NFPA 1126, standard for the use of pyrotechnics before a proximate audience;**
- (5) Procedures for the issuance and renewal of a registration, certificate and permit;**
- (6) A fee schedule;**
- (7) Establishing insurance or bond requirements;**
- (8) Establishing additional criteria for the granting of a registration, certificate, or permit under this article; and**
- (9) Registration of manufacturers, wholesalers and distributors.**

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

HB 2852 of the 2016 Regular Session legalized consumer fireworks and shifted responsibility for registration of sparklers and novelties from the Tax Commissioner to the State Fire Marshal. The law takes effect on June 1, 2016. In order to effectively regulate and administer the sale and use of consumer fireworks statewide, the State Fire Marshal must promulgate this emergency rule. The state Legislature expressly provided emergency rulemaking authority in 29-3E-8(a) to address this circumstance.

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", "to prevent substantial harm to the public interest"

par. 14

This decision shall be cited as Emergency Rule Decision 1-16 or ERD 1-16 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Fire Marshal.



NATALIE E. TENNANT
Secretary of State

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