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Secretary of State
State of West Virginia

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September 29, 2016

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Risk and Insurance Management

RULE: Amendment, 115CSR1, Mine Subsidence Insurance

DATE FILED AS AN EMERGENCY RULE: September 15, 2016

DECISION NO. 19-16

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.

A handwritten signature in black ink that reads "Natalie E. Tennant".

NATALIE E. TENNANT
Secretary of State

EMERGENCY RULE DECISION
(ERD 19-16)

AGENCY: Risk and Insurance Management
RULE: Amendment, 115CSR1, Mine Subsidence Insurance
FILED AS AN EMERGENCY RULE: September 15, 2016

- par. 1 The Risk and Insurance Management (BRIM) 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 BRIM filed this emergency rule with supporting documents with the Secretary of State September 15, 2016 and with the LRMRC September 15, 2016.
- par. 7 It is the determination of the Secretary of State that the BRIM 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 §33-30-15 reads:

*§33-30-15. Rules and regulations.
The board is authorized to promulgate and adopt such rules and regulations relating to mine subsidence insurance as are necessary to effectuate the provisions of this article. Such rules and regulations shall be promulgated and adopted pursuant to the provisions of chapter twenty-nine-a of this code.*
- par. 9 It is the determination of the Secretary of State that the BRIM 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 BRIM are as follows:

House Bill 4734 amends §33-30-8 of the West Virginia Code, relating to mine subsidence insurance; and increased the maximum amount of total insured value reinsured by the Board of Risk and Insurance Management for property owners in West Virginia. The changes are effective October 1, 2016, and it is therefore necessary to immediately amend 115CSR1 in order to provide new premium rates for the additional amount of insurance limits, modify the claim handling procedure, and modify the Reinsurance Agreement document to reflect the changes enacted by the Legislature in HB 4734.

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). . . "time limitation"

par. 14 This decision shall be cited as Emergency Rule Decision 19-16 or ERD 19-16 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Risk and Insurance Management.



NATALIE E. TENNANT
Secretary of State

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