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(Plus all the volunteer
help we can get)

November 17, 1997

OFFICE OF THE
SECRETARY OF STATE
Nov 18 8 38 AM '97
FILED

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Governor's Committee on Crime Delinquency & Correction

RULE: Amendments, Series 2, Basic Training Academy, Annual In-Service and Biennial In-Service Training Standards

DATE FILED AS AN EMERGENCY RULE: October 1, 1997

DECISION NO. 13-97

Following review under WV 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.


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EMERGENCY RULE DECISION
(ERD 13-97)

AGENCY: Governor's Committee on Crime, Delinquency and Correction
RULE: Amendments, Series 2, Basic Training Academy, Annual In-Service and Biennial In-Service Training Standards

FILED AS AN EMERGENCY RULE: October 1, 1997

- par. 1 The Governor's Committee on Crime, Delinquency and Correction (Committee) has filed the above amendments to an existing rule as an emergency rule.
- par. 2 West Virginia 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: WV 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 Committee filed this emergency rule with supporting documents with the Secretary of State October 1, 1997 and with the LRMRC October 1, 1997.

par. 7 It is the determination of the Secretary of State that the Committee has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code 30-29-3 reads in part:

Promulgate standards governing the qualification of law-enforcement officers and the entry level law-enforcement training curricula.

par. 9 It is the determination of the Secretary of State that the Committee has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- WV 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 Committee are as follows:

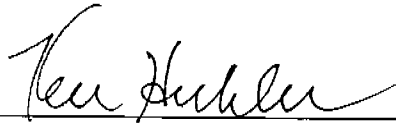
The Law Enforcement Training Subcommittee of the Governor's Committee on Crime, Delinquency and Correction's legislative rule promulgated during the 1997 term of the legislature had sections under Recertification Requirements inadvertently left out (149-2-15.2 through 149-2-15.3). This portion of the rule is used on a routine basis to provide guidelines to returning officers for their requirements for recertification and it was not the intention of the Subcommittee to eliminate them. This section pertains to the training requirements for officers who have been certified and absent from law enforcement for a period of more than 24 months. The emergency is created by current regulation that does not contain this section. It allows an officer who had been certified under the provision of §30-29-5 and who has been absent from law enforcement for a period of time from 24 months to 16 years to return to active police duty without meeting prerequisite requirements for physical abilities, skills or knowledge training prior to, or while performing, law enforcement duties.

Additional revisions to the legislative rule are as follows:

- Revises the definitions to conform to current code
- Reinforces the 90 calendar day training application requirement period, defines an academy application, and provides for a provision for an extension to the 90 day requirement
- Defines for the purpose of this rule the following:
 - Ø scholastic failure
 - Ø non-enforcement position
 - Ø absent from law enforcement
- Provides a trainee will be paid for 40 hour work week while attending a basic entry level training program
- Provides a time period for which the passage of the physical ability test will be valid and the consequences for the voluntary withdraw of an applicant by his/her agency prior to the start of an academy class
- Provides that an officer who fails to participate in a physical ability testing program on the assigned date without an excused absence will have this failure to participate counted as a failure of the test.

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). . . "prevent substantial harm to the public."

par. 14 This decision shall be cited as Emergency Rule Decision 13-97 or ERD 13-97 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Governor's Committee on Crime, Delinquency and Correction, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

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OFFICE OF THE SECRETARY OF STATE

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