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(Plus all the volunteer
help we can get)

September 5, 2000

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

OFFICE OF THE
SECRETARY OF STATE
SEP 6 1 28 PM '00
FILED

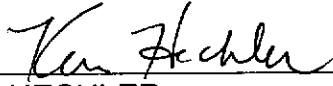
AGENCY: West Virginia Economic Development Authority

RULE: Amendment, Series 1, General Administration of the West Virginia Capital Company Act: Establishment of the Application Procedures to Implement the Act

DATE FILED AS AN EMERGENCY RULE: July 28, 2000

DECISION NO. 13-00

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.



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EMERGENCY RULE DECISION
(ERD 13-00)

AGENCY: West Virginia Economic Development Authority
RULE: Amendment, Series 1, General Administration of the West Virginia Capital Company Act: Establishment of the Application Procedures to Implement the Act

FILED AS AN EMERGENCY RULE: July 28, 2000

- par. 1 The West Virginia Economic Development Authority (WVEDA) has filed the above amendments 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 WVEDA filed this emergency rule with supporting documents with the Secretary of State July 28, 2000 and with the LRMRC July 28, 2000.

par. 7 It is the determination of the Secretary of State that the WVEDA 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 §5E-1-5 reads:

The authority shall promulgate rules in accordance with §29A-3-1 et seq. of this code, to carry out the policy and purposes of this article, to provide any necessary clarification of the provisions of this article, and to efficiently provide for the general administration of this article.

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

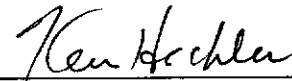
The Capital Company Act, W. Va. Code §5E-1-1 et seq. was amended during the 2000 regular session of the Legislature. The current legislative rules do not reflect the 2000 amendments of the statute.

More specifically, W. Va. Code §5E-1-6(d) as amended in 2000, prohibits the WVEDA from designating applicants as qualified capital companies until information is received from the applicants evidencing that they will sufficiently promote the purpose of providing employment. WVEDA is currently in the process of examining applications of entities desiring to become qualified capital companies and to receive tax credits. The emergency rule addresses the statutory amendment to section §5E-1-6(d) and requires applicants and qualified companies designated as such after July 1, 2000, to provide information to WVEDA in order to satisfy the new statutory requirements. The tax credits applied for greatly exceed the tax credits available for the fiscal year beginning July 1, 2000. As such, the application process is crucial and the emergency rule is the only avenue for WVEDA to make the legislative rules implement the amended statute before the application process is completed and tax credits allocated. It is therefore imperative that the provisions

of the current legislative rules be amended by this emergency rule.
W. VA Code §5E-1-8(b)(2) was also amended in 2000 to require WVEDA to allocate up to \$2 million in tax credits to one or more small business investment companies or "SBICs." The current legislative rule reflects the 1999 statutory amendments which reserved up to \$1.75 million in tax credits for SBIC applicants. The emergency rule is required to reflect the new \$2 million amount for 2000.

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 the public welfare" and "to prevent substantial harm to the public interest"

par. 14 This decision shall be cited as Emergency Rule Decision 13-00 or ERD 13-00 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia Economic Development Authority, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER
Secretary of State

Entered _____

OFFICE OF THE SECRETARY OF STATE

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