

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

JAN CASTO
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000
FAX: (304) 558-0900



STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

(Plus all the volunteer
help we can get)

September 4, 1997

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: State Fire Commission

RULE: Amendments, Series 4, State Building Code

DATE FILED AS AN EMERGENCY RULE: August 27, 1997

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SEP 4 11 39 AM '97

FILED

DECISION NO. 8-97

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 8-97)

AGENCY: State Fire Commission
RULE: Amendments, Series 4, State Building Code
FILED AS AN EMERGENCY RULE: August 27, 1997

- par. 1 The State Fire Commission (Commission) 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 Commission filed this emergency rule with supporting documents with the Secretary of State August 27, 1997 and with the LRMRC August 27, 1997.

par. 7 It is the determination of the Secretary of State that the Commission 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 §29-3-5b(a) reads:

The state fire commission shall promulgate and repeal rules and regulations to safeguard life and property and to ensure the quality of construction of all structures erected or renovated throughout this state pursuant to the provisions of §29-1-1 et seq. of this code through the adoption of the state building code. such rules, regulations, amendments or repeals thereof shall be in accordance with standard safe practices so embodied in widely recognized standards of good practice for building construction and all aspects related thereto and shall have force and effect in those counties and municipalities adopting the state building code.

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

The adoption of the State Building Code last year eliminated the opportunity of designers to use two choices on stair geometry. As a result, the manufactured housing industry cannot meet the new stair geometry without a significant cost increase to the consumer. The State Fire Commission is correcting this error and permitting stair geometry to be built by the provisions of the exception to the Rule. Without this modification, West Virginia Industry will face financial hardship and possible layoffs.

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

par. 14

This decision shall be cited as Emergency Rule Decision 8-97 or ERD 8-97 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Sate Fire Commission, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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FILED

SEP 4 11 14 AM '97

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

State Capitol - Room MB-49
Charleston, West Virginia 25305
(304) 347-4840

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Senator: Mike Ross, Co-Chairman
Delegate: Mark Hunt, Co-Chairman
Counsel: Debra A. Graham

Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Audrey R. Ross, Admin. Assistant

August 29, 1997

The Honorable Ken Hechler
Secretary of State
Building 1 - Suite 157K
1900 Kanawha Boulevard, East
Charleston, WV 25305-0770

Re: State Fire Commission - State Building Code (87CSR4)

Dear Secretary Hechler:

The State Fire Commission on August 27, 1997, filed with you an amendment to its legislative rule, State Building Code, relating to stair geometry. The proposed amendment was put out for public hearing, and was also filed in the form of an emergency rule. Our Committee adopted a motion at its August 19, 1997, meeting authorizing us, as co-chairmen, to request that you prepare a favorable Emergency Rule Decision on this emergency rule.

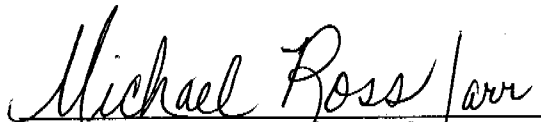
At the Committee meeting several representatives from the housing industry, and in particular, the modular housing industry, addressed the Committee regarding the effect that the current stair geometry standards would have on their industry. According to information they provided to the Committee, the stair geometry standard in West Virginia is different from that of all of the other states. If the standard is not changed, the cost of building stick homes would increase. Also, it would not be possible to sell modular housing in this state without increasing costs, as manufactured modular homes would have to be modified to meet West Virginia standards. As many West Virginians depend on modular housing as a source of reasonably priced housing, the Committee feels it is imperative that this type of housing remain available and reasonably priced.

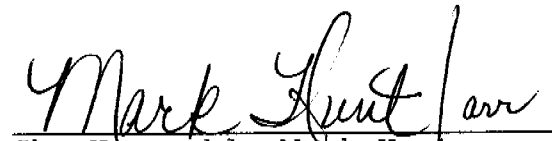
Letter to Secretary of State
August 26, 1997

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Again, we are requesting on behalf of the Legislative Rule-Making Review Committee that you find that an emergency does exist and approve an emergency rule proposed by the State Fire Commission relating to the State Building Code.

Very truly yours,


The Honorable Michael Ross
Co-Chairman
Legislative Rule Making Review
Committee


The Honorable Mark Hunt
Co-Chairman
Legislative Rule Making Review
Committee

DAG:arr