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December 20, 2002

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

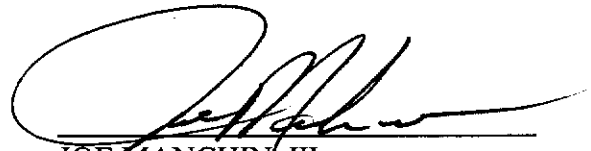
AGENCY: State Fire Marshal

RULE: New Rule, 103CSR1, Certification of Electrical Inspectors

DATE FILED AS AN EMERGENCY RULE: November 22, 2002

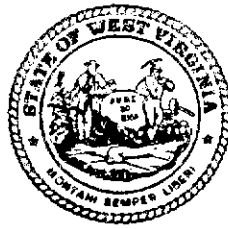
DECISION NO. 26-02

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.


JOE MANCHIN, III
Secretary of State

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SECRETARY OF STATE

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EMERGENCY RULE DECISION
(ERD 26-02)

AGENCY: State Fire Marshal
RULE: New Rule, 103CSR1, Certification of Electrical Inspectors
FILED AS AN EMERGENCY RULE: November 22, 2002

- par. 1 The State 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 Marshall filed this emergency rule with supporting documents with the Secretary of State November 22, 2002 and with the LRMRC November 22, 2002.

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 §29-3C-4 reads:

(a) The state fire marshal shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code to establish a program for the certification of electrical inspectors. Proposed rules shall provide: Standards and procedures for certification, including applications, examinations, fees, qualifications, procedures for investigating complaints, revoking or suspending certifications and for renewing licenses. The state fire marshal is also authorized to propose emergency rules to implement the provisions of this article: Provided, That the emergency specify an initial certification fee of fifty dollars.

(b) The state fire marshal shall certify an electrical inspector upon a finding that the applicant possesses the requisite qualifications.

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 Marshal are as follows:

Rule must be implemented to comply with statutory effective date of January 1, 2003. §29-3C-4 authorizes the State Fire Marshal to file emergency rule to fulfill this mandate. Many potential electrical inspectors are awaiting rule implementation as a guide to certification. Currently, some electrical utilities require electrical inspections prior to electrical service activation. §29-3C mandates certification of electrical inspectors on or after January 1, 2003.

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). . . "mandated by legislature" and "time limitation"

par. 14

This decision shall be cited as Emergency Rule Decision 26-02 or ERD 26-02 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the State Fire Marshal, the Attorney General and the Legislative Rule Making Review Committee.

A handwritten signature in black ink, appearing to read "Joe Manchin", is written over a horizontal line.

JOE MANCHIN, III
Secretary of State

Entered _____