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January 23, 2004

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Hatfield-McCoy Regional Recreational Authority

RULE: 204CSR1, New Rule, Rules for Use of Facilities

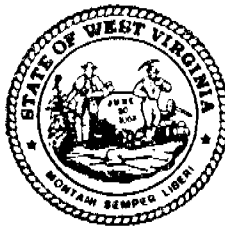
DATE FILED AS AN EMERGENCY RULE: January 12, 2004

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

DECISION NO. 1-04

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 1-04)

AGENCY: Hatfield-McCoy Regional Recreational Authority
RULE: 204CSR1, New Rule, Rules for Use of Facilities
FILED AS AN EMERGENCY RULE: January 12, 2004

- par. 1 The Hatfield-McCoy Regional Authority (Authority) 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 Authority filed this emergency rule with supporting documents with the Secretary of State January 12, 2004 and with the LRMRC January 12, 2004.

par. 7 It is the determination of the Secretary of State that the Authority 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 §20-14-5(22) reads:

(22) To promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code as necessary to implement and make effective the powers, duties and responsibilities invested in the authority by the provisions of this article and otherwise by law, including regulation of the conduct of persons using the Hatfield-McCoy recreation area. Notwithstanding any other provisions of this code to the contrary, until the Legislature has authorized the rules, the authority may promulgate emergency rules for those purposes pursuant to section fifteen, article three, chapter twenty-nine-a of this code;

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

These rules will protect the public health, safety & welfare. In addition, the rules will prevent substantial harm to the public interest. Last year nearly 600,000 people road the trail system. There are currently no rules in place. These rules would allow Authority officials to prohibit dangerous acts performed by riders on the trails

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(a)(1).

par. 14

This decision shall be cited as Emergency Rule Decision 1-04 or ERD 1-04 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Hatfield-McCoy Regional Recreation Authority, the Attorney General and the Legislative Rule Making Review Committee.



JOE MANCHIN, III
Secretary of State

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