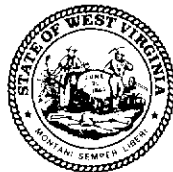


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(Plus all the volunteer
help we can get)

July 29, 1999

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

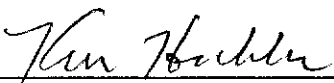
AGENCY: DIVISION OF HEALTH

RULE: NEW RULE, SERIES 44, FIRE DEPARTMENT RAPID RESPONSE SERVICES

DATE FILED AS AN EMERGENCY RULE: JUNE 29, 1999

DECISION NO. 8-99

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.



KEN HECHLER
Secretary of State

OFFICE OF THE
SECRETARY OF STATE
STATE OF WEST VIRGINIA

Aug 4 9 51 AM '99

FILED

SCANNED

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EMERGENCY RULE DECISION (ERD 8-99)

AGENCY: DIVISION OF HEALTH
RULE: NEW RULE, SERIES 44, FIRE DEPARTMENT RAPID RESPONSE SERVICES

FILED AS AN EMERGENCY RULE: JUNE 29, 1999

- par. 1 The Division of Health (Division) has filed the above new 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 Division filed this emergency rule with supporting documents with the Secretary of State June 29, 1999 and with the LRMRC June 29, 1999.

par. 7 It is the determination of the Secretary of State that the Division 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 §16-4C-23(b) reads:

Notwithstanding the provisions of §16-4C-6(a) of this article, the commissioner shall propose for promulgation a legislative rule regulating fire department rapid response services, pursuant to §29A-3 of this code which: (1) Establishes licensure and certification requirements for fire department rapid response services who do not charge for their services or transport patients; (2) incorporates necessary applicable emergency medical services requirements for licensure for "emergency medical services" as the requirements apply to fire departments as defined in §16-4C-3(d) of this article; and (3) creates an exemption from license and inspection fees for fire departments that do not charge fees for their services and which authorizes such fire departments to conduct self inspections of their emergency vehicles in accordance with any applicable state or federal requirements for emergency medical service vehicles. The commissioner shall file the rule required by this subsection as an emergency rule on or before July 1, 1999. The Legislature hereby finds that an emergency exists compelling promulgation of an emergency rule, consistent with the provisions of this subsection.

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

This rule is filed in accordance with the last 2 sentences of HB 3040 (§16-4C-23(b)) passed by the Legislature on March 12, 1999, that finds that an emergency exists compelling the filing of an emergency rule before July 1, 1999.

- 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). . . "time limitation"
- par. 14 This decision shall be cited as Emergency Rule Decision 8-99 or ERD 8-99 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Division of Health, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

Entered _____

OFFICE OF THE SECRETARY OF STATE

AUG 4 9 51 AM '99

FILED