

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

JAN CASTO
Deputy Secretary of State

Telephone: (304) 558-6000
Corporations: (304) 558-8000
FAX: (304) 558-0900
E-Mail WVSOS@Secretary.State.WV.US



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

CATHERINE FREROTTE
Executive Assistant

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

(Plus all the volunteer
help we can get)

July 27, 1998

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Division of Health

RULE: New Rule, Series 45, Lead Abatement Licensing

DATE FILED AS AN EMERGENCY RULE: June 15, 1998

DECISION NO. 6-98

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.

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE July 27, 1998
ADMINISTRATIVE LAW DIVISION



KEN HECHLER
Secretary of State

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

JAN CASTO
Deputy Secretary of State

Telephone: (304) 558-6000
Corporations: (304) 558-8000
FAX: (304) 558-0900
E-Mail WVSOS@Secretary.State.WV.US



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

CATHERINE FREROTTE
Executive Assistant

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

(Plus all the volunteer
help we can get)

EMERGENCY RULE DECISION
(ERD 6-98)

AGENCY: Division of Health
RULE: New Rule, Series 45, Lead Abatement Licensing
FILED AS AN EMERGENCY RULE: June 15, 1998

- 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 15, 1998 and with the LRMRC June 15, 1998.

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 §16-35-4 reads:

The director shall administer and enforce this article, and has the following powers and duties:

(1) To propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq of this code, necessary to carry out the requirements of this article, including, but not limited to, abatement personnel training guidelines, procedures for the issuance and renewal of lead discipline licenses, establishment of all fees necessary to pay for the implementation and enforcement of this program, and the regulation of lead abatement projects;

(2) To issue, suspend and revoke lead discipline licenses, regulate lead abatement projects, and assess fees and civil penalties pursuant to this article and the rules promulgated hereunder;

(3) To promulgate any emergency rules necessary to gain federal approval of the state lead abatement program in accordance with §29A-15-3;

(4) To accredit training providers, training courses, examiners, examinations and grading systems developed for licensing disciplines pursuant to this article;

(5) To order reduction or abatement of identified lead hazards when they may result in child lead poisoning; and

(6) To develop a public awareness campaign on the dangers of lead poisoning and to promote public education of the requirements of this article.

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:

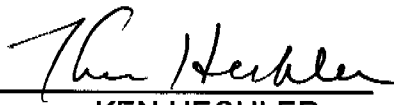
The 1998 Legislature passed HB 4034 which allows the state to certify and license

lead abatement professionals and to regulate lead abatement projects. This passage was in response to a federal mandate which required the certification of all lead abatement professionals no later than August 31, 1998. The United States Environmental Protection Agency has been authorized to operate certification programs in any states which do not have lead abatement professionals no later than August 31, 1998. The United States Environmental has been authorized to operated certification programs in any states which do not have lead abatement licensing laws and rules in place by August 31, 1998. In order to comply with the August 31 deadline, this rule must be filed as an emergency. The federal rule which mandated certification and licensing programs in 40 CFR Part 745: Lead; Requirements for Lead Based Paint Activities in Target Housing and Child Occupied Facilities; Final Rule.

Lead based paint poisoning is today's foremost preventable disease among young children. It is estimated that one of every 11 children nationwide have elevated blood lead levels which can lead to disorders of the nervous system, impaired growth, learning disabilities, hyperactivity and renal system problems. The Division of health received approximately 70 referrals of childhood blood lead poisoning cases in the past year. The proposed rule will enable the Division to assure that all persons disturbing lead based paint are properly trained with regard to acceptable abatement methods. Thus, the filing of this rule as an emergency will ensure the immediate protection of the public health and safety.

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). . . "public health and safety."

par. 14 This decision shall be cited as Emergency Rule Decision 6-98 or ERD 6-98 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 _____

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE July 27, 1998
ADMINISTRATIVE LAW DIVISION