WEST VIRGINIA CODE: §29A-3-15A

§29A-3-15a. Disapproval of emergency rules and amendments to emergency rules by the Secretary of State; judicial review.

(a) Upon the filing of an emergency rule or filing of an amendment to an emergency rule by an agency, under the provisions of section fifteen of this article, by any agency, except for the Secretary of State, the Secretary of State shall review such rule or such amendment and, within forty-two days of such filing, shall issue a decision as to whether or not such emergency rule or such amendment to an emergency rule should be disapproved. An emergency rule filed by the Secretary of State shall be reviewed by the Attorney General as provided for in section fifteen-b of this article.

(b) The Secretary of State shall disapprove an emergency rule or an amendment to an emergency rule if he determines:

(1) That the emergency rule or an amendment to the emergency rule exceeds the scope of the law authorizing or directing the promulgation thereof; or

(2) That an emergency does not exist justifying the promulgation of the emergency rule or the filing of an amendment to the emergency rule; or

(3) That the emergency rule or an amendment to the emergency rule was not promulgated in compliance with the provisions of section fifteen of this article.

(c) If the Secretary of State determines, based upon the contents of the rule or the supporting information filed by the agency, that the emergency rule should be disapproved, he may disapprove such rule without further investigation, notice or hearing. If, however, the Secretary of State concludes that the information submitted by the agency is insufficient to allow a proper determination to be made as to whether the emergency rule should be disapproved, he may make further investigation, including, but not limited to, requiring the agency or other interested parties to submit additional information or comment or fixing a date, time and place for the taking of evidence on the issues involved in making a determination under the provisions of this section.

(d) If the Secretary of State determines, based upon the contents of the amendment to an emergency rule or the supporting information filed by the agency, that the amendment to the emergency rule should be disapproved, he may disapprove such amendment without further investigation, notice or hearing. If, however, the Secretary of State concludes that the information submitted by the agency is insufficient to allow a proper determination to be made as to whether the amendment should be disapproved, he may make further investigation, including, but not limited to, requiring the agency or other interested parties to submit additional information or comment or fixing a date, time and place for the taking of evidence on the issues involved in making a determination under the provisions of this

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section.

(e) The determination of the Secretary of State shall be reviewable by the Supreme Court of Appeals under its original jurisdiction, based upon a petition for a writ of mandamus, prohibition or certiorari, as appropriate. Such proceeding may be instituted by:

(1) The agency which promulgated the emergency rule;

(2) A member of the Legislature; or

(3) Any person whose personal property interests will be significantly affected by the approval or disapproval of the emergency rule by the Secretary of State.

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