



Mac Warner
Secretary of State
State of West Virginia

FILED

2017 JUL 20 P 2:34

OFFICE OF THE SECRETARY OF STATE

Office of the Secretary of State
State Capitol
Charleston, West Virginia 25305

Telephone: (304) 558-6000
Toll Free: 1-866-SOS-VOTE
Fax: (304) 558-0900
www.wvsos.gov

July 20, 2017

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE


AGENCY: Miners' Health Safety and Training

RULE: 56CSR23, New Rule, Operating Diesel Equipment in Underground Mines in West Virginia

DATE FILED AS AN EMERGENCY RULE: June 22, 2017

DECISION NO. 6-17

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.


Mac Warner
Secretary of State

EMERGENCY RULE DECISION
(ERD 6-17)

- par. 1 Miners' Health, Safety and Training 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 Miners' Health, Safety and Training filed this emergency rule with supporting documents with the Secretary of State and with LRMRC June 22, 2017.
- par. 7 It is the determination of the Secretary of State that the Miners' Health, Safety and Training 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 §22A-2A-1001(a) reads:

(a) By August 31, 2017, the director shall revise state rules promulgated pursuant to the authority of this chapter as follows:
- par. 9 It is the determination of the Secretary of State that the Miners' Health, Safety and Training 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 Miners' Health, Safety and Training are as follows:

During the 2017 legislative session, the Legislature passed Senate Bill 687. Senate Bill 687 mandated that the Director of the Office of Miners, Health, Safety and Training make nine specified changes to the Rules for Operating Diesel Equipment in Underground Mines in West Virginia by August 31, 2017. The amendments to this rule make those nine changes and, in order to comply with the Legislatures time frame, the rule must be filed as an emergency.

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). . . "immediate preservation of public peace, health, safety or welfare", "time limitation" and "immediate preservation of public peace, health, safety or welfare"

par. 14 This decision shall be cited as Emergency Rule Decision 6-17 or ERD 6-17 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Miners' Health, Safety and Training.



Mac Warner
Secretary of State

Entered _____

FILED
2017 JUL 20 P 2:37
CLERK OF COURTS
OFFICE