WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION

Form #2

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OFFICE WEST VIRGINIA SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Div. of Homeland Security and Emergency Management TITLE NUMBER: 170

RULE TYPE: Legislative CITE AUTHORITY: W. Va. Code Chapter15-5B-5

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 1

TITLE OF RULE BEING PROPOSED: Mine and Industrial Accident Rapid Response System

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON March 31, 2006 AT 4:00pm ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

James J. Gianato, Director
West Virginia Division of Homeland
Security and Emergency Management
1900 Kanawha Boulevard, East
Building 1, Room EB-80
Charleston, WV 25305-0360

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

James W Spears
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

$4.40

SUMMARY OF LEGISLATIVE RULE
TITLE 170, SERIES 1

Proposed by the West Virginia Division of Homeland Security and Emergency Management

The attached proposed Legislative Rule is tendered in response to Senate Bill No. 247, as passed January 23, 2006. This bill created a new article of West Virginia Code designated §15-5B. This new article empowers and enjoins the Director of the Division of Homeland Security and Emergency Management to establish and operate the Mine and Industrial Accident Rapid Response System in order to provide for effective response to mining and industrial accidents.

This Legislative Rule is generally arranged as required by W. Va. Code §29A and in the format prescribed. It is comprised of sections addressing the adoption of the proposed Legislative Rules in order to establish and operate the Mine and Industrial Accident Rapid Response System within the Division of Homeland Security and Emergency Management. The proposed Rule defines several terms pertinent to the operation of the Mine and Industrial Accident Rapid Response System. This proposed Rule further delineates the responsibilities regarding the establishment of the Mine and Industrial Accident Rapid Response System Call Center to include: developing a standard operating guide for use in operations: developing, equipping and organizing the Call Center; providing for appropriate recording and documentation of calls received by the Center; and, publication of the appropriate statewide reporting telephone number.

Further, the proposed Legislative Rule provides for information to be reported in the event of an accident and maintaining the confidentiality of this information, as appropriate. The Rule includes provisions for Request for Information under the Freedom of Information Act and provisions for confidentiality of personal information and industrial trade secrets, when warranted.

CIRCUMSTANCES REQUIRING RULE TO BE FILED
TITLE 170, SERIES 1

Proposed by the West Virginia Division of Homeland Security and Emergency Management

Senate Bill No. 247, as passed January 23, 2006, requires the establishment of the Mine and Industrial Accident Rapid Response System in order to provide adequate, appropriate and effective coordination of rescue response operations to accidents involving mining or industrial sites. The Mine and Industrial Accident Rapid Response System is vital to the life and health of West Virginia's miners and industrial workers involved in hazardous operations.

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

TITLE 170
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF HOMELAND SECURITY
AND EMERGENCY MANAGEMENT

SERIES 1
MINE AND INDUSTRIAL ACCIDENT RAPID RESPONSE
SYSTEM

§170-1-1. General.

1.1. Scope. Pursuant to Chapter 15, Article 5B, Section 5 of the West Virginia Code, the West Virginia Division of Homeland Security and Emergency Management does hereby adopt the following rules governing the establishment and operation of the Mine and Industrial Accident Rapid Response System (MIARRS) for the purpose of coordinating rapid and appropriate response to mining and industrial accidents; governing participation by public agencies in response to mining or industrial accidents; and, governing protections of privacy for the state's citizens and of the homeland security during the project, as well as governing the distribution generally of records and information collected during response operations.

1.2. Authority. -- W. Va. Code §15-5B-5.

1.3. Filing Date. --

1.4. Effective Date. --

§170-1-2. Definitions.

2.1. The following terms shall have the meaning as used in this Rule unless in a context that requires a different meaning:

a. "Director" is defined as the Director of the Division of Homeland Security and Emergency Management.

b. "Center" is defined as the facility, communications equipment, personnel and procedures utilized to perform the reporting and initial notification functions of the Mine and Industrial Accident Rapid Response System.

c. 'Covered facilities' means all underground mining operations, surface mining operations, and industrial operations, regardless of the source of the hazard.

d. 'Accident' is defined in W. Va. Code §22A-2-66 to include the following:

1. Death of an individual at a mine;

2. An injury to an individual at a mine which has a reasonable potential to cause death;

3. The entrapment of an individual;

4. The unplanned inundation of a mine by a liquid or gas;

5. The unplanned ignition or explosion of gas or dust;

6. The unplanned ignition or explosion of a blasting agent or an explosive;

7. An unplanned fire in or about a mine not extinguished within five minutes of ignition;

8. An unplanned roof fall at or above the

anchorage zone in active workings where roof bolts are in use or an unplanned roof or rib fall in active workings that impairs ventilation or impedes passage;

9. A coal or rock outburst that causes withdrawal of miners or which disrupts regular mining activity for more than one hour;

10. An unstable condition at an impoundment, refuse pile or culm bank which requires emergency action in order to prevent failure, or which causes individuals to evacuate an area, or the failure of an impoundment, refuse pile or culm bank;

11. Damage to hoisting equipment in a shaft or slope which endangers an individual or which interferes with the use of equipment for more than thirty minutes;

12. An event at a mine which causes death or bodily injury to an individual not at the mine at the time the event occurs; and,

13. Similar events in industrial operations other than mining operations.

e. 'Emergency mine response' includes all incident reporting, rescue and on-scene operations and coordination of all involved parties.

f. 'Response procedures' means those procedures developed by the Director regarding the Mine and Industrial Accident Rapid Response System and distributed internally in the Center and externally to effected agencies and operators.

g. 'Release Authority' is the Director or his or her

designee and applies to the release of information, records, recordings and other pertinent materials collected or in the possession of the Center under the terms of the Freedom Of Information Act, W. Va. §29B-1 et seq. and the identity of victims or their families.

2.2. Terms not defined in these rules, nor having a meaning ascribed to them pursuant to W. Va. Code §15-5B shall have the meaning and definition ascribed to them by other applicable regulations, codes, or rules.

§170-1-3. Center Establishment and Operations.

3.1. The Director will cause a standard operating guide to be developed for the Center. This standard operating guide will detail the initial and subsequent steps to be taken in response to a covered incident.

3.2. The Director will establish the Center in an appropriate space near the State Emergency Operations Center. This new Center will be equipped with appropriate telephone, telephone recording equipment, caller identification equipment, facsimile, internet access, furniture and other equipment relative to the Center. The Director will also staff the Center with personnel necessary to the operation of the Center.

3.3. The Division of Homeland Security and Emergency Management may accept grants and donations toward any cost associated with establishing, equipping and operating the MIARRS.

3.4. All personnel who work for the MIARRS must undergo an appropriate background check prior to being employed by the director.

3.5. The Director shall cause an appropriate method and process for coordinating emergency response assets including

industry inspectors from regulatory agencies, response equipment and supplies and other response data. Such coordination methods and processes may include electronic information manipulation and retrieval and appropriate geospatial information systems.

3.6. The reporting telephone line and its associated numbers are to be obtained and published by the Director not later than March 1, 2006. These telephone numbers shall be distributed to all local jurisdiction emergency management personnel, local jurisdiction 911 centers, and industrial operations. The Director shall also cause these numbers to be published to the general public. The Director shall also provide these telephone numbers to the Office of Miners' Health, Safety and Training for distribution to all mine operators and state mine inspector staff.

§170-1-4. Notification of Emergency Incidents by Covered Facilities.

4.1 All covered facilities are to report incidents to the Division of Homeland Security and Emergency Management at the current agency telephone number until such time as a statewide toll-free number is established and published.

4.2 All calls received on the published line are to be recorded for documentation purposes. Such recording of calls is to be automatic and the recorded call information, to include time of call and complete voice transcripts, shall be made available to any appropriate, approved and authorized representative of regulatory, enforcement, or investigative agencies upon written request. Such requests must describe the nature of the need for such information and the purpose for which it will be used.

4.3 Voice and data recordings of calls received at the Center shall not be released to the public, pursuant to the Freedom of Information Act or other authority for request, until such time as the Release Authority has approved the request. At no time will

recordings be released to any agency not involved in an active investigation until after notification of next of kin in the event of death or injuries which may result in death. The Director shall establish an appropriate fee schedule to recover costs associated with any Freedom of Information request.

4.4 Any call received at the center on any line that involves the reporting of a crime, law enforcement information or such information as may be detrimental to any investigation shall not be released subject to any Freedom of Information request until such time as it may be deemed appropriate by the director after consultation with the appropriate law enforcement agency having jurisdiction or the appropriate prosecutorial authority for the jurisdiction in which the incident occurred.

§170-1-5. Requests for Information – General Provisions.

5.1. Requests for information pursuant to the Freedom Of Information Act, W. Va. Code §29B-a et seq., shall be held in abeyance until appropriate notification of next of kin of any deceased or victims that are grievously injured.

5.2. All requests for information must include the following information in order for the request to be considered. The minimal information is as follows:

a. Approximate dates and times of incidents on which information records are requested,

b. General information regarding the incident to aid in identifying the specific records required,

c. The intended use of any information provided,

d. Name and organization of the individual

making the request,

e. The date and time information is required, and,

f. Any other related information regarding the individual request.

5.3. Requests for information shall be processed in accordance with W. Va. Code §29B-1et seq. to include appropriate fees for duplication and other costs.

§170-1-6. Trade Secrets and Confidential Information

6.1 Covered facilities requesting protection of information considered as trade secrets or proprietary information must provide justification for such requests in accordance with W. Va. Code §29B-1-4.

6.2 All information received and recorded by Center personnel will be held confidential, except as otherwise provided. Information regarding the identity and physical condition of potential deceased victims of mining or industrial incidents or grievously injured victims and their immediate families shall be held in strictest confidence and shall not be released without the expressed consent of the next of kin or an individual with appropriate power of attorney.

6.3 Information received and recorded by the Center or its personnel which contains law enforcement information or information involved in the reporting of an actual or potential crime is exempt from Freedom of Information Act release without prior approval of appropriate law enforcement officials.

6.4 Information received shall be released to appropriate regulatory or investigative agencies upon written request and upon approval by the Director or his or her designee.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 170, Series 1 - Mine and Industrial Accident Rapid Response System

Type of Rule: [X] Legislative [ ] Interpretive [ ] Procedural

Agency: West Virginia Division of Homeland Security and Emergency Management

Address: 1900 Kanawha Boulevard, East
Building 1, Room EB-80
Charleston, WV 25305

Phone Number: (304) 558-5380 Email: jgianato@wvdmaps.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

These proposed rules will require a minimum of eight full-time equivalent positions in order to provide full, around the clock operations and the acquisition of a toll-free reporting line service, recording equipment and other office equipment over and above the agency's current organization. These new positions and additional equipment will result in a first year additional cost of approximately $412,476.80 for the remainder of the current fiscal year. The net increase of $28,738.40 reflects the increase in converting the personnel costs to a full fiscal years less a reduction in equipment costs to those of maintenance and continuing services versus first year acquisitions. The resulting full-year costs are estimated at $441,215.20.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	412,476.80	28,738.40	441,215.20
Personal Services	287,476.80	143,738.40	431,215.20
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	125,000.00	115,000.00	10,000.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

Rule Title: 170, Series 1 - Mine and Industrial Accident Rapid Response System

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

The current year estimates above represent the initial start up costs, including additional personnel and the purchase of equipment needed to outfit the call center for the Mine and Industrial Accident Rapid Response System, through the end of the current fiscal year. The net increase shown above represents the extension of personnel costs to a full year, less a reduction in equipment costs from initial acquisition to routine maintenance and supplies for the equipment. The total costs on an annual basis for the call center are shown in the far right column. This program and the proposed emergency rules do not generate revenue to offset these costs.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

The emergency rules, as submitted, do not appear to have any other fiscal impacts. However, there may be adjustments required subsequent to the study of other reporting systems currently operated by other state agencies required under Senate Bill No. 247, as passed and enrolled January 2006. There may be certain other statewide reporting processes combined with or absorbed into the Mine and Industrial Accident Rapid Response System. The results of the study required by the referenced legislation are to be reported in November of this year. The impacts of those adjustments would accompany appropriate amendments to these emergency rules and/or legislative rules to follow.

Date: _____

Signature of Agency Head or Authorized Representative

_____