

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND**

ADMINISTRATIVE LAW DIVISION

Form #4

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OFFICE WEST VIRGINIA
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NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Division of Homeland Security and Emergency Management TITLE NUMBER: 170

CITE AUTHORITY: W. Va. Code Chapter 15-5B-5

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

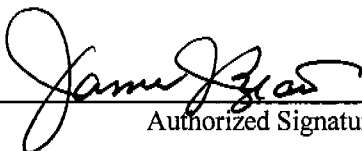
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 170CSR1

TITLE OF RULE BEING PROPOSED: MINE AND INDUSTRIAL ACCIDENT RAPID RESPONSE SYSTEM

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Authorized Signature

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. The purpose of this rule is 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. --

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§170-1-2. Definitions.

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

2.1. "Accident" means the following:

2.1.a. Death of an individual at a mine;

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

2.1.c. The entrapment of an individual;

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

2.1.e. The unplanned ignition or explosion of gas or dust;

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

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

2.1.h. 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;

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

2.1.j. 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;

2.1.k. 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; and,

2.1.l. An event at a mine which causes death or bodily injury to an individual not at the mine at the time the event occurs.

2.2 "Center" means 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.

2.3 "Covered facilities" means all underground mining operations, and surface mining operations regardless of the source of the hazard.

2.4 "Director" means the Director of the Division of Homeland Security and Emergency Management.

2.5 "Emergency" means an unexpected situation or event that demands immediate action to protect life and property or that requires a response that exceeds the capabilities of the covered facility or responding agency.

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

2.7 "MIARRS" means the Mine and Industrial Rapid Response System.

2.8 "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.

§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 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.

3.3. The Director of the Division of Homeland Security and Emergency Management shall be the custodian of all records of the Center.

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

4.1. All covered facilities are to report accidents or emergencies to the Division of Homeland Security and Emergency Management at the Mine and Industrial Accident Call Center at 1-866-987-2338 or other such number as may be identified by the director.

4.2. All calls received on the published line are to be electronically 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.

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

5.1. The Director of the Division of Homeland Security and Emergency Management shall be the custodian of all records of the Center for the purposes of complying with W. Va. Code §29B-1, et seq.

5.2. The Director shall establish an appropriate fee schedule to recover costs associated with any Freedom of Information request.

5.3. All requests for information should include the following information in order for the request to be considered sufficiently specific:

5.3.a. Name of the individual and organizational affiliation of the individual making the request; and,

5.3.b. Approximate dates and times of incidents on which information records are requested.

5.4. Requests for information shall be processed in accordance with W. Va. Code §29B-1, et seq., to include the imposition of 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. The director shall not release 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 pursuant to any Freedom of Information request before the director has consulted with the appropriate law enforcement agency having jurisdiction or the appropriate prosecutorial authority for the jurisdiction in which the incident occurred.

6.3. 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.