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August 7, 2001

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: BOARD OF MINER TRAINING, EDUCATION AND CERTIFICATION

RULE: AMENDMENTS, 48CSR7, RULES & REGULATIONS GOVERNING THE
STANDARDS FOR CERTIFICATION OF COAL MINE ELECTRICIANS

DATE FILED AS AN EMERGENCY RULE: AUGUST 2, 2001

DECISION NO. 8-01

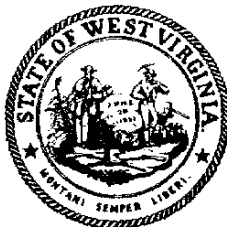
Following review under W. Va. Code §29A-3-15a, it is the decision of the Secretary of State that the above emergency rule is **approved**. A copy of the complete decision with required findings is available from this office.

JOE MANCHIN, III
Secretary of State

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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EMERGENCY RULE DECISION
(ERD 8-01)

AGENCY: BOARD OF MINER TRAINING, EDUCATION & CERTIFICATION
RULE: AMENDMENTS, 48CSR7, RULES & REGULATIONS GOVERNING
THE STANDARDS FOR CERTIFICATION OF COAL MINE
ELECTRICIANS

FILED AS AN EMERGENCY RULE: AUGUST 2, 2001

- par. 1 The Board of Miner Training, Education & Certification (Board) has filed the above amendments to an existing 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 Board filed this emergency rule with supporting documents with the Secretary of State August 2, 2001 and with the LRMRC August 2, 2001.

par. 7 It is the determination of the Secretary of State that the Board 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-7-9 reads:

The director shall have the power and authority to propose or promulgate rules and regulations to organize the office and to carry out and implement the provisions of this article and article one-a, two, five and six of this chapter and chapter twenty-two of this code relating to health and safety inspections and enforcement. All rules and regulations in effect on the effective date of this article which pertain to the provisions of articles one-a, two, five and six of this chapter and chapter twenty-two of this code as they relate to health and safety inspection and enforcement shall remain in effect until changed or superseded by the director, or as appropriate. Except when specifically exempted by the provisions of this chapter, or chapter twenty-two of this code, all rules or changes thereto shall be proposed or promulgated by the director in accordance with the provisions of chapter twenty-nine-a of this code.

par. 9 It is the determination of the Secretary of State that the Board 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 Board are as follows:

The Federal Mine Safety & Health Review Commission ruled that MSHA's bifurcated electrical certification program created anomalies having the immediate potential to compromise miner health & safety, and therefore, the public's health & safety.

§30CFR75.153 Mandatory Safety Standards -- Underground Coal Mines; Electrical Work; Qualified Persons; §30CFR77.103 Mandatory safety Standards -- Surface Coal Mines; Electrical Work; Qualified Person and a letter of notification from MSHA dated November 2, 2001, requiring revisions to the current certification program. All mines require certified electricians as a prerequisite to operate. It is possible that

several mining operations state-wide would be idled for indefinite periods of time unless low/medium voltage qualified electricians are afforded the opportunity to transition to the federally mandated high-voltage qualification. This emergency rule is consistent with the Legislature's declaration that the continued prosperity of the coal mining industry is of primary importance to the public interest.

All coal mine electricians in West Virginia who were certified as "low/medium-voltage" only prior to the Commissions' written decision must attain high-voltage qualification by December 31, 2001 to be considered certified electricians by MSHA.

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" and "prevent substantial harm to the public interest."

par. 14 This decision shall be cited as Emergency Rule Decision 8-01 or ERD 8-01 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Board of Miner Training, Education & Certification, the Attorney General and the Legislative Rule Making Review Committee.

JOE MANCHIN, III
Secretary of State

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