



Betty Ireland
Secretary of State

OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

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May 25, 2007

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Board of Miners Training Education & Certification

RULE: 48CSR8, New Rule Rules Governing the Criteria & Standards for Alternative Training Programs for Apprentice Coal Mine Electricians

DATE FILED AS AN EMERGENCY RULE: May 17, 2007

DECISION NO. 2-07

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.

A handwritten signature in cursive script, appearing to read "Betty Ireland".

BETTY IRELAND
Secretary of State

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, West Virginia 25305

EMERGENCY RULE DECISION
(ERD 2-07)

AGENCY: Board of Miners Training Education & Certification
RULE: 48CSR8, New Rule Rules Governing the Criteria & Standards for Alternative Training Programs for Apprentice Coal Mine Electricians
FILED AS AN EMERGENCY RULE: May 17, 2007

- par. 1 The Board of Miners Training Education & Certification (Board) 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 Board filed this emergency rule with supporting documents with the Secretary of State May 17, 2007 and with the LRMRC May 17, 2007.
- 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-7-5 reads:

§22A-7-5. Board powers and duties.

The board shall establish criteria and standards for a program of education, training and examination to be required of all prospective miners and miners prior to their certification in any of the various miner specialties requiring certification, under this article or any other provision of this code. Such specialties include, but are not limited

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to, underground miner, surface miner, apprentice, underground mine foreman-fire boss, assistant underground mine foreman-fire boss, shotfirer, mine electrician and belt examiner. Notwithstanding the provisions of this section the director may by rule further subdivide the classification for certification.

(b) The board may require certification in other miner occupational specialties: Provided, That no new specialty may be created by the board unless certification in a new specialty is made desirable by action of the federal government requiring certification in a specialty not enumerated in this code.

(c) The board may establish criteria and standards for a program of preemployment education and training to be required of miners working on the surface at underground mines who are not certified under the provisions of this article or any other provision of this code.

(d) The board shall set minimum standards for a program of continuing education and training of certified persons and other miners on an annual basis. Prior to issuing said standards, the board shall conduct public hearings at which the parties who may be affected by its actions may be heard. Such education and training shall be provided in a manner determined by the director to be sufficient to meet the standards established by the board.

(e) The board may, in conjunction with any state, local or federal agency or any other person or institution, provide for the payment of a stipend to prospective miners enrolled in one or more of the programs of miner education, training and certification provided for in this article or any other provision of this code.

(f) The board may also, from time to time, conduct such hearings and other oversight activities as may be required to ensure full implementation of programs established by it.

(g) Nothing in this article empowers the board to revoke or suspend any certificate issued by the director of the office of miners' health, safety and training.

(h) The board may, upon its own motion or whenever requested to do so by the director, deem two certificates issued by this state to be of equal value or deem training provided or required by federal agencies to be sufficient to meet training and education requirements set by it, the director, or by the provisions 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 State of West Virginia is experiencing a shortage of certified electricians. Some coal operators are unable to find any certified electricians. If coal operators are unable to find certified electricians to work at their mine, they will be forced to shut down their coal operation. The mine operators that do possess certified electricians are unable to open additional sections because they do not have a sufficient number of certified electricians. This will create a loss of revenue to the state as well as a loss of jobs for West Virginia residents.

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 "to prevent substantial harm to the public interest"

par. 14 This decision shall be cited as Emergency Rule Decision 2-07 or ERD 2-07 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Miners Training Education & Certification, the Attorney General and the Legislative Rule Making Review Committee.


BETTY IRELAND
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