

WEST VIRGINIA
SECRETARY OF STATE
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ADMINISTRATIVE LAW DIVISION

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OFFICE OF THE SECRETARY OF STATE
ADMINISTRATIVE LAW DIVISION

NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE

AGENCY: Office of Miners' Health, Safety & Training TITLE NUMBER: 56

DATE EMERGENCY RULE WAS ORIGINALLY FILED: October 31, 1991

IS THIS THE FIRST EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE:

Yes

IS THIS THE SECOND EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE:

No

DATE OF FIRST EMERGENCY AMENDMENT: _____

SERIES NUMBER OF RULE: 2 TITLE OF RULE Rules and Regulations
Governing the Standards for Mine Rescue Stations, Rescue Programs, and Mandatory
Coverage for all Underground Mines

THE ATTACHED IS AN EMERGENCY AMENDMENT TO AN EXISTING EMERGENCY RULE. THIS
EMERGENCY AMENDMENT BECOMES EFFECTIVE UPON FILING.

Stephen F. Webber

Stephen F. Webber
Director



STATE OF WEST VIRGINIA

DIVISION OF MINE HEALTH, SAFETY AND TRAINING

DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES

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GASTON CAPERTON
GOVERNOR

STEPHEN F. WEBBER
DIRECTOR

S U M M A R Y

The legislative rule which was submitted on October 31, 1991, is now being resubmitted after receiving comments and consultation with the coal industry and the West Virginia Coal Mine Health and Safety Board.

The changes incorporated make this rule consistent with federal law and incorporate existing state code language.

The changes do not substantially change the first proposal of October 31, 1991, and have been unanimously agreed upon by the West Virginia Board of Coal Mine Health, Safety and Training after many hours of consultation with the Office of Miners' Health, Safety and Training, the West Virginia Coal Association and labor.

The other notable change is that the rules submitted on October 31, 1991, were filed as Title 38, Series 22 and these rules are submitted as Title 56, Series 2. The title transfer for the Office of Miners' Health, Safety and Training was reassigned by the Secretary of State's Office.

DATE: January 24, 1992

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Office of Miners' Health, Safety and Training

Stephen F. Wesber

EMERGENCY RULE TITLE: Rules and Regulations Governing the Standards for Mine Rescue Stations, Rescue Programs, and Mandatory Coverage for All Underground Mines

1. Date of filing: January 24, 1992
2. Statutory authority for promulgating the emergency rule:
§22A-7-8
3. Date of filing of proposed legislative rule: _____
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?
Yes, its an emergency amendment to an emergency rule

5. Has the same or similar emergency rule previously been filed and expired?
No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare
Mine rescue stations are not being maintained at a state of readiness.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

No time limit has been established, but this regulation will

bring us into compliance with CFR 30, Part 49. This program

is funded 100% by the U.S. Department of Labor, Mine Safety and Health Administration.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

Due to the lack of maintenance, many rescue teams would not be able to respond to a mine emergency. This regulation will establish standards for mine rescue stations that will allow us to insure readiness should an emergency occur. At this time, only those mines employing 50 or more persons are required to provide mine rescue coverage at their mine. With increased automation in the mining industry, only 20% of the active mines in West Virginia are required to have coverage; 80% of the active mines employ 49 or less persons, and by State law, are not required to have mine rescue coverage. With fatalities on the rise, we must be prepared to respond if an emergency occurs.

LEGISLATIVE RULES
MINERS' HEALTH, SAFETY AND TRAINING
TITLE 56, SERIES 2

56-2-1 General.

1.1 Scope. This legislative rule establishes standards for mine rescue stations, rescue programs, and mandatory coverage for all underground mines.

1.2 Filing Authority. 22A-7-8

1.3 Filing Date. October 31, 1991

1.4 Effective Date. October 31, 1991

56-2-2 Definitions.

2.1 All terms used in this regulation, not defined herein, shall have the meanings set forth in Chapter 22A, Article 1A, Section 1 of the West Virginia Code.

56-2-3 Mine Rescue Stations; Equipment.

3.1 The director is hereby authorized to purchase, equip and operate for the use of said division such mine rescue stations and equipment as he may deem necessary.

56-2-4 State Mine Rescue Crews.

4.1 The director is hereby authorized to have trained and employed at the rescue stations, operated by the division within the state, such rescue crews as he may deem necessary. Each member of a rescue crew shall devote four hours each month for training purposes and shall be available at all times to assist in rescue work at explosions and mine fires. For such services regular members shall receive the sum of thirty-two dollars per month, and captains shall receive thirty-five dollars per month, payable on requisition approved by the director. The director may remove any member of a rescue crew at any time.

56-2-5 Mine Rescue Teams.

5.1 It shall be the responsibility of the operator to provide mine rescue coverage at each active underground mine.

5.2 Mine rescue coverage may be provided by:

(A) Establishing at least two mine rescue teams which are available at all times when miners are underground or;

(B) Enter into an arrangement for mine rescue services which assures that at least two mine rescue teams are available at all times when miners are underground.

5.3 As used in this part, mine rescue teams shall be considered available where teams are capable of presenting themselves at the mine site(s) within a reasonable time after notification of an occurrence which might require their services. Rescue team members will be considered available even though performing regular work duties or in a off-duty capacity. The requirement that mine rescue teams be available shall not apply when teams are participating in mine rescue contests or providing services to another mine.

5.4 In the event of a fire, explosion or recovery operations in or about any mine, the director is hereby authorized to call and assign any rescue team for the protection of and the preservation of property.

The director also may assign mine rescue and recovery work to inspectors, instructors, or other qualified employees of the division as he may deem desirable.

5.5 To ensure adequate coverage for all underground mines, no mine rescue station may provide coverage to more than thirty-five (35) mines within the two (2) hour ground travel limit as defined in Section 5.7 of this regulation.

5.6 Each mine rescue team shall consist of five (5) members and one (1) alternate, who are fully qualified, trained, and equipped for providing emergency mine rescue service. Each mine rescue team shall be trained by a state certified mine rescue instructor.

5.7 To be considered for membership on a mine rescue team, each person must have been employed in an underground mine for a minimum of one year. For the purpose of mine rescue work only, miners who are employed on the surface but work regularly underground shall meet the experience requirement. The underground experience requirement is waived for those miners on a mine rescue team on the effective date of this rule.

The ground travel time between any mine rescue station and any mines served by that station shall not exceed two (2) hours.

5.8 An applicant for initial mine rescue training shall not have reached their fiftieth (50th) birthday, and shall pass on at least an annual basis, a physical examination by a licensed physician. A record that such examination was taken, together with pertinent data relating

thereto, shall be kept on file by the operator, and a copy shall be furnished to the director.

All rescue teams shall be guided by the mine rescue apparatus and auxiliary equipment manual.

5.9 Upon completion of the initial training, all team members shall receive at least 40 hours of refresher training annually. This training shall be given at least four (4) hours each month, or for a period of eight (8) hours every two months. This training shall include:

(A) Sessions underground at least once each six (6) months.

(B) The wearing and use of the breathing apparatus by team members for a period of at least two (2) hours while under oxygen every two (2) months.

(C) Where applicable, the use, care, capabilities, and limitations of auxiliary mine rescue equipment, or a different breathing apparatus.

(D) Mine map training and ventilation procedures.

5.10 (A) When engaged in rescue and recovery operations at a mine, all rescue team members shall remain employees of their existing employer and shall be compensated at the prevailing wage rate in the industry for the most skilled class of inside mine labor. Such compensation shall be paid by the employer of the mine rescue team member.

(B) The employer of the mine rescue team members shall provide appropriate workers' compensation coverage for each team member.

(C) The operator of the mine where the emergency exists shall reimburse the employer of the mine rescue team members for all services performed.

5.11 During the recovery work and prior to entering any mine at the start of each shift, all rescue or recovery teams shall be properly informed of existing conditions and work to be performed by the designated company official in charge.

5.12 For every two (2) teams performing rescue or recovery work underground, one (1) six-member team shall be stationed at the mine portal.

5.13 Each rescue or recovery team performing work with breathing apparatus shall be provided with a backup team of equal strength, stationed at each fresh air base.

5.14 Two-way communication and lifeline or its equivalent shall be provided at each fresh air base for all mine rescue or recovery teams, and no mine rescue team member shall advance more than one thousand feet in by the fresh air base: Provided, that if a life may possibly be saved and existing conditions do not create an unreasonable hazard to mine rescue team members, such rescue team may advance a distance agreed upon by those persons directing the mine rescue or recovery operations: Provided, however, that lifeline or its equivalent shall be provided in by each fresh air base for all mine rescue or recovery teams.

5.15 A rescue or recover team shall immediately return to the fresh air base when any team member's atmospheric pressure depletes to sixty atmospheres, or equivalent.

5.16 Each mine rescue station shall be provided with at least the following equipment:

(A) Twelve (12) self-contained oxygen breathing apparatus, each with a minimum of two (2) hours capacity, and any necessary equipment for testing such breathing apparatus.

(B) A portable supply of liquid air, liquid oxygen, pressurized oxygen, oxygen generating or carbon dioxide absorbent chemicals, as applicable to the supplied breathing apparatus and sufficient to sustain each team for six (6) hours while using the breathing apparatus during rescue operations.

(C) One (1) extra oxygen bottle (fully charged) for each self-contained compressed oxygen breathing apparatus, as required under 5.16(A) of this regulation.

(D) One (1) oxygen pump or a cascading system, compatible with the supplied breathing apparatus.

(E) Twelve (12) permissible cap lamps and a charging rack.

(F) Two (2) gas detectors appropriate for each type of gas which may be encountered at the mines served.

(G) Two (2) oxygen indicators or two (2) flame safety lamps.

(H) One (1) portable mine rescue communication system or a sound-powered communicating system. The wires or cable to the communication system shall be of sufficient tensile strength to be used as a manual communication system. These communication systems shall be at least 1,000 feet in length.

(I) Necessary spare parts and tools for repairing the breathing apparatus and communication system, as presently prescribed by the manufacturer.

(J) Mine rescue stations are to provide a centralized storage location for rescue equipment. This centralized storage location may be either at the mine site, affiliated mines, or a separate mine rescue structure.

5.17 Mine rescue apparatus and equipment shall be maintained in a manner that will ensure readiness for immediate use. A person trained in the use and care of breathing apparatus shall inspect and test the apparatus at intervals not exceeding thirty (30) days and shall certify by signature and date that the inspections and tests were done. When the inspection indicates that a corrective action is necessary, the corrective action shall be made and the person shall record the corrective action taken. The certification and the record of corrective action shall be maintained at the mine rescue station for a period of one (1) year and made available on request to an authorized representative of the director.

5.18 Authorized representatives of the director shall have the right of entry to inspect any designated mine rescue station.

5.19 When an authorized representative finds a violation(s) of any of the mine rescue requirements, he shall take appropriate corrective action in accordance with WV Code 22A-1A-13.

5.20 Companies affiliated with a station issued an order will be notified of that order and that their mine rescue program is invalid. Companies affiliated with that station will have twenty-four (24) hours to submit a revised mine rescue program.

5.21 Every operator of an underground mine shall develop and adopt a mine rescue program that must be submitted to the director within thirty (30) days of the effective date of this regulation. Provided, however, a new program need only be submitted when conditions exist as defined in Section 5.20 of this regulation, or when information contained within the program has changed due to circumstances.

5.22 A copy of the mine rescue program must be posted at the mine and kept on file at the company's mine rescue station or rescue station affiliate and with the state regional office where the mine is located.

A copy of the mine emergency notification plan pursuant to 30 CFR 49.9(A) will satisfy the requirements of Section 5.21 of this regulation if submitted to the director.

5.23 The operator shall immediately notify the director of any changed conditions materially affecting the information submitted in the mine rescue program.

KEN HECHLER
Secretary of State

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Deputy Secretary of State

ROBERT E. WILKINSON
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(Plus all the volunteer
help we can get)

February 14, 1992

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Miners' Health, Safety & Training

RULE: New Rule, Series 2, Rules & Regs Governing the Standards
For Mine Rescue Stations, Rescue Programs, and Mandatory
Coverage for all Underground Mines

DATE FILED AS AN EMERGENCY RULE: January 24, 1992

DECISION NO. 7-92

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

A handwritten signature in cursive script that reads "Ken Hechler".

KEN HECHLER
Secretary of State

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OFFICE OF THE SECRETARY OF STATE

KEN HECHLER
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DECISION

EMERGENCY RULE DECISION (ERD 7-92)

AGENCY: Office of Miners' Health, Safety & Training
RULE: New Rule, Series 2, Rules & Regs Governing the Standards for Mine Rescue Stations, Rescue Programs & Mandatory Coverage for all Underground Mines

FILED AS AN EMERGENCY RULE: January 24, 1992

- par. 1 The Office of Miners' Health, Safety & Training (Office) has filed the above new rule as an emergency rule.
- par. 2 West Virginia Code 29A-3-a 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-a(a))].
- par. 4 (A) Procedural Compliance: WV 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 thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The Office filed this emergency rule with supporting documents with the Secretary of State January 24, 1992 and with the LRMRC January 24, 1992.

par. 7 It is the determination of the Secretary of State that the Office has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §22A-7-8 reads in part:

The director shall have the power and authority to propose and promulgate rules and regulations to organize this office and to carry out and implement the provisions of this article... relating to health and safety inspections and enforcement.

par. 9 It is the determination of the Secretary of State that the Office has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency WV Code 29A-3-15(g) defines "emergency" as follows:

(g) 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 Office are as follows:

Due to the lack of maintenance, many rescue teams would not be able to respond to a mine emergency. This regulation will establish standards for mine rescue stations that will allow us to insure readiness should an emergency occur. At this time, only those mines employing 50 or more persons are required to provide mine rescue coverage at their mine. With increased automation in the mining industry, only 20% of the active mines employ 49 or less persons, and by State law, are not required to have mine rescue coverage. With fatalities on the rise, we must be prepared to respond if an emergency occurs.

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(g). . . "to prevent substantial harm to the public interest.

par. 14 This decision shall be cited as Emergency Rule Decision 7-92 or ERD 7-92 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Office of Miners' Health, Safety & Training, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

Entered _____

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