

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #7

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2006 FEB -1 P 6:54

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

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

CITE AUTHORITY: W.Va. Code 22A-2-55

EMERGENCY 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: Series 2

TITLE OF RULE BEING PROPOSED: Emergency Rules Governing Protective Clothing and
Equipment

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME
EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER
FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE
AS FOLLOWS:

Use additional sheets if necessary


Authorized Signature

EMERGENCY RULE QUESTIONNAIRE

DATE: February 1, 2006

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Office of Miners' Health, Safety and Training,

1615 Washington Street, East, Charleston, WV 25311-2126

304-558-1425

EMERGENCY RULE TITLE: Emergency Rules Governing Protective Clothing and Equipment

1. Date of filing February 1, 2006
2. Statutory authority for promulgating emergency rule:
W Va Code 22A-2-55
3. Date of filing of proposed legislative rule: _____
4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? New language.
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.
~~The instant emergency rules are necessary to protect the health, safety and welfare of~~
miners from the inherent dangers of underground mining. Given recent events the
~~Legislature passed SB247 requiring enhanced requirements for the protective equipment~~
and clothing worn by underground miners. Full and complete implementation of SB247
~~neecessitates promulgation of these emergency rules.~~

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.

~~W.Va. Code 22A-2-55(i) authorizes the Director to promulgate emergency rules to~~
implement the provisions of SB247, which was signed into law January 26, 2006. While
~~no precise time limit was prescribed by that bill, the public interest requires the prompt~~
promulgation of these emergency rules.

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

~~The instant emergency rules are necessary to prevent substantial harm to the public~~
interest. Given recent events the Legislature passed SB247 requiring enhanced
~~requirements for the protective equipment and clothing worn by underground miners.~~
Full and complete implementation of SB247 necessitates promulgation of these
emergency rules.

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EMERGENCY

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATIVE RULE

OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING

TITLE 56

SERIES 2

EMERGENCY RULES GOVERNING PROTECTIVE CLOTHING AND EQUIPMENT

§56-2-1. General.

1.1. Scope. -- These emergency rules pertain to the implementation of provisions of W. Va. Code § 22A-2-55, relating to the regulation of protective clothing and equipment worn by persons underground by the Office of Miners' Health, Safety and Training.

1.2. Authority. -- W. Va. Code § 22A-2-55.

1.3. Filing Date. -- February 1, 2006.

1.4. Effective Date. -- _____, 2006.

§56-2-2. Preamble.

2.1. Purpose - The primary goal of section fifty-five, article two, chapter twenty-two-a of the Code is to protect the health and safety of this State's coal miners by requiring minimum standards for the protective clothing and equipment worn by each underground miner. The purpose of these regulations is to implement the mandate of section fifty-five, article two, chapter twenty-two-a of the Code by requiring coal mine operators to provide each

underground miner with certain protective equipment and by detailing the requirements for such protective equipment. In implementing such mandate, it is recognized that different types of protective equipment may be developed to satisfy the minimum requirements for protective equipment for each mine, depending upon the number of employees of the particular mine, the location of the particular mine, the physical features of the particular mine, and technological advances.

§56-2-3. Definitions.

3.1. Unless herein defined, all terms used in this rule shall have the same meaning as they are defined in W. Va. Code §22A-1-2 and W. Va. Code §22A-2-55.

3.2. "Code" shall mean the Code of West Virginia, 1931, as amended.

§56-2-4. Storage Caches of Additional Self-Contained Self-Rescue Devices.

4.1. In addition to providing each person underground a self-contained self-rescue device in accordance with the provisions of subdivision (1), subsection (f), section fifty-five, article two, chapter twenty-two-a of the Code, the operator shall also provide caches of additional self-contained self-rescue devices throughout the mine in accordance with a Storage Cache Plan approved by the Director.

4.1.1. Each additional self-contained self-rescue device

shall be adequate to protect a miner for one hour or longer.

4.1.2. Each cache shall be housed in a container constructed of fire retardant material or material treated with a fire retardant paint or laminate and constructed in a manner capable of protecting the self-contained self rescue devices stored therein from damage by fire.

4.2. One cache shall be placed at a readily available location in each working section of the mine.

4.2.1. Each cache placed in each working section of the mine shall contain sufficient additional self-contained self-rescue devices to provide each miner at the working section with no less than sixteen (16) additional self-contained self-rescue devices. However, subject to further scientific study and evaluation, the Director may increase the minimum number of additional self-contained self-rescue devices set forth herein if deemed necessary to maintain persons awaiting rescue underground for sustained periods of time.

4.3. Storage caches also shall be placed in readily available locations throughout the remainder of the mine as follows:

4.3.1. When the height of the coal seam is above forty-eight (48) inches, every two-thousand five hundred (2,500) feet from the point where the last working section meets the main entry up to the surface, unless the conditions in the particular mine require placement at closer intervals.

4.3.2. When the height of the coal seam is below forty-eight (48) inches, every one thousand two hundred fifty (1,250) feet from the point where the last working section meets the main entry up to the surface, unless the conditions in the particular mine require placement at closer intervals.

4.3.3. Each non-working section storage cache shall contain a number of additional self-contained self-rescue devices equal to or exceeding the total number of employees who are underground during any given working shift.

§56-2-5. Storage Cache Plan.

5.1. Within thirty (30) calendar days of the effective date of these rules and regulations, all operators of all mines shall submit a Storage Cache Plan and have such plan approved by the Director. The design, development, submission, and implementation of the Storage Cache Plan shall be the responsibility of the operator of each mine.

5.2. Within thirty (30) calendar days after submission of the initial Storage Cache Plan, the Director shall either approve the plan as submitted, or shall reject and return the plan to the operator for modification and resubmission, stating in detail the reasons for such rejection. If the plan is rejected, the Director shall give the operator a reasonable length of time, not to exceed fifteen (15) calendar days, to modify and resubmit such plan.

5.3. In developing the initial Storage Cache Plan, the operator shall take into consideration the number of employees of the particular mine, the location of the particular mine, the physical features of the particular mine, and any other aspect of the particular mine the operator deems relevant to the development of the Storage Cache Plan.

5.4. The Storage Cache Plan shall include the following:

5.4.1. The size and physical features of the mine;

5.4.2. The minimum number of persons underground during each working shift;

5.4.3. The proposed location of the various storage caches in relation to persons underground; and

5.4.4. A schedule of compliance, which shall include:

a. a narrative description of how the operator will achieve compliance with subdivision (2), subsection (f), section fifty-five, article two, chapter twenty-two-a of the Code.

b. a schedule of measures, including an enforceable sequence of actions with milestones, leading to compliance; and

c. a statement indicating when the implementation of the proposed plan will be complete.

5.4.5. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

5.5. Each operator shall submit as attachments to its Storage

Cache Plan the following:

5.5.1. A statement that the analysis and evaluation required by section 5.3 of these rules and regulations has been completed;

5.5.2. A statement indicating the training dates for the use of the self-contained self-rescue devices; and

5.5.3. The name of the person or persons representing the operator, including his or her title, position, mailing address and telephone number, who can be contacted by the Director for all matters relating to the Storage Cache Plan and the weekly inspections of each cache.

5.6. Within thirty (30) calendar days of the Director's approval of the plan, the operator shall provide to the Director a copy of any contract, purchase order, or other proof of purchase of such number of additional self-contained self-rescue devices consistent with the operator's schedule of compliance.

5.7. At any time after the Director has approved an operator's Storage Cache Plan, the operator may submit proposed modifications or revisions to its plan along with the reasons therefor to the Director.

5.7.1. Within thirty (30) calendar days after receipt by the Director of any proposed revisions or modifications to the Storage Cache Plan, the Director shall either approve or reject the revisions, stating in detail the reasons for such rejection.

5.7.2. The Director may require modifications to a Storage Cache Plan at any time following the investigation of a fatal accident or serious injury, as defined by Title 36, Series 19, Section 3.2, if such modifications are warranted by the findings of the investigation.

5.8. If the Director, in his sole discretion, determines that an operator has failed to provide a Storage Cache Plan, has provided an inadequate Storage Cache Plan, has failed to comply with its approved Storage Cache Plan, or has failed to provide a copy of any contract, purchase order or other proof of purchase required under this section, in an effort to delay, avoid or circumvent compliance with subdivision (2), subsection (f), section fifty-five, article two, chapter twenty-two-a of the Code or these rules and regulations, the Director shall issue a cessation order to the operator for the affected mine.

§56-2-6. Placement of Intrinsically Safe Battery-Powered Lights and Lifeline Cords.

6.1. Intrinsically safe battery-powered strobe lights shall be affixed to each cache of self-contained self-rescue devices and shall be capable of automatic activation in the event of an emergency.

6.1.1. All intrinsically safe battery-powered strobe lights affixed to each cache of self-contained self-rescue devices

shall be approved by MSHA and maintained in accordance with applicable MSHA requirements.

6.2. A luminescent sign with the words "SELF-RESCUER" or "SELF-RESCUERS" shall be conspicuously posted at each such cache and luminescent direction signs shall be posted leading to each cache.

6.3. Lifeline cords shall be attached to each cache from the last open crosscut to the surface and must:

6.3.1. be made of durable material;

6.3.2. be marked with reflective material every twenty-five (25) feet;

6.3.3. be located in such a manner for miners to use effectively to escape; and

6.3.4. have directional indicators signifying the route of escape placed at intervals not exceeding one hundred (100) feet.

6.4. The operator shall conduct weekly inspections of each cache of additional self-contained self-rescue devices, the affixed strobe lights, and each lifeline cord or other similar device to ensure that each will function properly in the event of an emergency.

§56-2-7. Wireless Emergency Communication Devices.

7.1. A wireless emergency communication device approved by the Director shall be worn by each person underground and shall be provided by the operator.

7.1.1. Within thirty (30) calendar days of the effective date of these rules and regulations, the Director shall notify all operators of the wireless emergency communications devices approved by the Director to be used by each person underground pursuant to subdivision one, subsection (g), section fifty-five, article two, chapter twenty two-a of the Code.

7.1.2. The wireless emergency communication devices approved by the Director must be capable of receiving emergency communications from the surface at any location throughout the mine.

7.1.3. Each operator shall train each miner in the use of the approved device employed at the mine, and refresher training courses for all underground employees shall be held during each calendar year.

7.1.4. Each operator shall train each miner in the use of the approved device employed at the mine, and refresher training courses for all underground employees shall be held during each calendar year.

7.2. All wireless emergency communication devices approved by the Director shall have received prior approval by MSHA and be maintained in accordance with applicable MSHA requirements.

7.3. Within thirty (30) calendar days of the Director giving notice of the approved wireless emergency communications devices, all operators shall submit to the Director a schedule of

compliance.

7.3.1. The schedule of compliance shall include:

a. a narrative description of how the operator will achieve compliance with subsection (g), section fifty-five, article two, chapter twenty-two-a of the Code;

b. a schedule of measures, including an enforceable sequence of actions with milestones, leading to compliance; and

c. a statement indicating when full compliance will be achieved.

7.3.2. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

7.3.3. Within thirty (30) calendar days after submission of the schedule of compliance, the Director shall either approve the schedule of compliance as submitted, or shall reject and return the schedule of compliance to the operator for modification and resubmission, stating in detail the reasons for such rejection. If the schedule of compliance is rejected, the Director shall give the operator a reasonable length of time, not to exceed fifteen (15) calendar days, to modify and resubmit such schedule of compliance.

7.3.4. Where applicable, the operator shall submit certified progress reports no less frequently than every thirty (30) calendar days until full compliance is achieved.

7.4. In developing the schedule of compliance, the operator

shall take into consideration the number of employees of the particular mine, the location of the particular mine, the physical features of the particular mine, and any other aspect of the particular mine relevant to the provision and operation of the wireless emergency communication devices.

7.5. Within thirty (30) calendar days of the Director's approval of the operator's schedule of compliance, the operator shall provide to the Director a copy of any contract, purchase order, or other proof of purchase of such wireless emergency communication devices consistent with the operator's schedule of compliance.

7.6. If the Director, in his sole discretion, determines that an operator has failed to provide a schedule of compliance, has provided an inadequate schedule of compliance, has failed to meet its approved schedule of compliance or has failed to provide a copy of any contract, purchase order or other proof of purchase required under this section, in an effort to delay, avoid or circumvent compliance with subsection (g), section fifty-five, article two, chapter twenty-two-a of the Code or these rules and regulations, the Director shall issue a cessation order to the operator for the affected mine.

§56-2-8. Wireless Tracking Devices.

8.1. A wireless tracking device approved by the Director shall be worn by each person underground and shall be provided by the

operator.

8.1.1. Within thirty (30) calendar days of the effective date of these rules and regulations, the Director shall notify all operators of the wireless tracking devices approved by the Director to be used by each person underground pursuant to subdivision one, subsection (h), section fifty-five, article two, chapter twenty two-a of the Code.

8.1.2. The wireless tracking devices approved by the Director must be capable of providing real-time monitoring of the physical location of each person underground.

8.1.3. No person shall discharge or in any other way discriminate against any miner based on information gathered by such wireless tracking device during non-emergency monitoring.

8.1.4. Each operator shall train each miner in the use of the approved device employed at the mine, and refresher training courses for all underground employees shall be held during each calendar year.

8.1.5. The operator shall install in or around the mine any and all equipment necessary to provide real-time emergency monitoring of the physical location of each person underground.

8.2. All wireless tracking devices approved by the Director shall have received prior approval by MSHA and be maintained in accordance with applicable MSHA requirements.

8.3. Within thirty (30) calendar days of the Director giving

notice of the approved wireless tracking devices, all operators shall submit to the Director a schedule of compliance.

8.3.1. The schedule of compliance shall include:

a. a narrative description of how the operator will achieve compliance with subsection (h), section fifty-five, article two, chapter twenty-two-a of the Code;

b. a schedule of measures, including an enforceable sequence of actions with milestones, leading to compliance; and

c. a statement indicating when full compliance will be achieved.

8.3.2. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

8.3.3. Within thirty (30) calendar days after submission of the schedule of compliance, the Director shall either approve the schedule of compliance as submitted, or shall reject and return the schedule of compliance to the operator for modification and resubmission, stating in detail the reasons for such rejection. If the schedule of compliance is rejected, the Director shall give the operator a reasonable length of time, not to exceed fifteen (15) calendar days, to modify and resubmit such schedule of compliance.

8.3.4. Where applicable, the operator shall submit certified progress reports no less frequently than every thirty (30) calendar days until full compliance is achieved.

8.4. In developing the schedule of compliance, the operator shall take into consideration the number of employees of the particular mine, the location of the particular mine, the physical features of the particular mine, and any other aspect of the particular mine relevant to the provision and operation of the wireless tracking devices.

8.5. Within thirty (30) calendar days of the Director's approval of the operator's schedule of compliance, the operator shall provide to the Director a copy of any contract, purchase order, or other proof of purchase of such wireless tracking communication devices consistent with the operator's approved schedule of compliance.

8.6. If the Director, in his sole discretion, determines that an operator has failed to provide a schedule of compliance, has provided an inadequate schedule of compliance, has failed to meet its approved schedule of compliance or has failed to provide a copy of any contract, purchase order or other proof of purchase required under this section, in an effort to delay, avoid or circumvent compliance with subsection (h), section fifty-five, article two, chapter twenty-two-a of the Code or these rules and regulations, the Director shall issue a cessation order to the operator for the affected mine.