



Betty Ireland
Secretary of State

OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

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WEST VIRGINIA
SECRETARY OF STATE

February 7, 2006

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Office of Miners' Health, Safety & Training

RULE: New Rule, 56CSR4, Emergency Rules Governing Protective Clothing & Equipment

DATE FILED AS AN EMERGENCY RULE: February 1, 2006

DATE FIRST EMERGENCY AMENDMENT FILED: February 27, 2006

DECISION NO. 3-06

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.


BETTY IRELAND
Secretary of State

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

EMERGENCY RULE DECISION
(ERD 3-06)

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RULE: New Rule, 56CSR4, Emergency Rules Governing Protective Clothing
& Equipment

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- par. 1 The Office of Miners' Health, Safety & Training (Office) has filed the above emergency amendment 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 Office filed this emergency rule with supporting documents with the Secretary of State February 27, 2006 and with the LRMRC February 27, 2006.
- par. 7 It is the determination of the Secretary of State that the Office 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-2-55(i) reads:
- (i) The director may promulgate emergency and legislative rules to implement and enforce this section pursuant to the provisions of article three, chapter twenty-nine-a of this code.*
- (j) The penalties set forth in this article enacted during the regular session of the Legislature in January, two thousand six, shall become effective the first day of July, two thousand six.*

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 -- 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 Office are as follows:

This amended rule provides for the following: the establishment of a Mine Safety Technology Task Force to provide technical assistance with the commercial availability and operational capability of rescue chambers, wireless communication and wireless tracking devices.

This rule determines the placement intervals of additional SCSRs to be used as a means to exit the mine. Rescue chambers are permitted that will provide 24 hours of breathable air.

Also, mining companies are required to submit a plan and compliance schedule for each of the requirements in the rule.

The emergency rules are necessary to protect the health, safety & welfare of miners from the inherent dangers of underground mining. Given recent events the Legislature passed SB 247 requiring enhanced requirements for the protective equipment & clothing worn by underground miners. Full & complete implementation of SB 247 necessitates promulgation of these rules.

WV Code §22A-2-55(I) authorizes the Director to promulgate emergency rules to implement the provisions of SB 247, which was signed into law January 26, 2006. While no precise time limit was prescribed by the bill, the public interest requires the prompt promulgation of these emergency rules.

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). . . "mandated by Legislature," "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 3-06 or ERD 3-06 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 and Training, the Attorney General and the Legislative Rule Making Review Committee.


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