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September 18, 2002

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

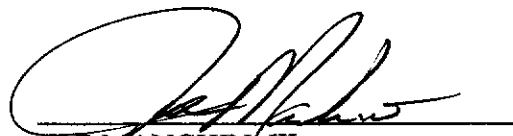
AGENCY: Miner's Health Safety & Training

RULE: New Rule, 56CSR10, Rule Governing Reporting Requirements for Independent Contractors

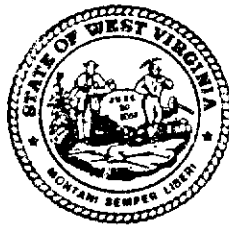
DATE FILED AS AN EMERGENCY RULE: August 15, 2002

DECISION NO. 20-02

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

SCANNED



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EMERGENCY RULE DECISION
(ERD 20-02)

AGENCY: Miner's Health, Safety & Training
RULE: New Rule, 56CSR10, Rule Governing Reporting Requirements for Independent Contractors

FILED AS AN EMERGENCY RULE: September 4, 2002

- par. 1 The West Virginia Office of Miner's Health, Safety & Training (Office) 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 Office filed this emergency rule with supporting documents with the Secretary of State August 15, 2002 and with the LRMRC September 3, 2002.

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-1-6 reads:

The director has the power and authority to propose or promulgate rules to organize the office and to carry out and implement the provisions of this chapter relating to health and safety inspections and enforcement. All rules in effect on the effective date of this article which pertain to the provisions of this chapter 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, 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 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:

Require independent contractors to report their employees, manhours, accidents & injuries. Such information is also critical in the development of appropriate safety programs to effectively address health & safety issues involving independent contractors.

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).

par. 14

This decision shall be cited as Emergency Rule Decision 20-02 or ERD 20-02 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia Office of Miner's Health, Safety and Training, the Attorney General and the Legislative Rule Making Review Committee.



JOE MANCHIN, III
Secretary of State

Entered _____

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OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA