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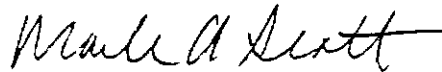
NOTICE OF EMERGENCY RULE

RULE TITLE: Safety Training Program for Prospective  
Surface Coal Miners in West Virginia

West Virginia Code, Chapter 22A, Article 2,  
Series 9

The current regulations governing training and certification of miners where certification has expired requires that a re-training program be completed before examination and re-certification. The Board of Miner Training, Education and Certification has determined that this requirement is delaying re-employment of numerous coal miners throughout the state. In many cases, such delays are resulting in lost opportunities for employment. The Board has further determined that re-training should not be a prerequisite to re-examination. Successful completion of the examination is sufficient demonstration of the candidate's knowledge and skills necessary for re-certification.

The situation calls for immediate relief to unemployed coal miners and clearly justifies the need for the emergency filing of the subject regulations.



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Director  
Division of Mines and Minerals

Department of Energy  
Division of Mines and Minerals  
Emergency Rule,  
Series 9, Section 2.8

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Section 2.8 Issuance and Expiration of Renewed  
Apprentice Miners' Cards

- A. Apprentice miner's cards may be renewed ~~(t)~~ <sup>(t)</sup> time by retaking and passing with a score of at least 75% the appropriate apprenticeship examination ~~within (30) days after the expiration date of the initial apprentice miner's card.~~
- B. The renewed apprentice miner's card is valid for ~~(6)~~ (12) months.
- C. If an apprentice begins apprenticeship ("on the job") training as a miner prior to the expiration date on the renewed apprentice miner card, the card will remain valid until the completion of the apprenticeship training, provided that such training is continuous and a miner's certificate is obtained.
- D. If the apprentice does not begin apprenticeship ("on the job") training as a miner prior to the expiration date on the renewed apprentice miner card, the card will become invalid on the expiration date.
- E. ~~Upon expiration of the renewed card a prospective miner would have to successfully complete the approved 40 hour pre-employment training program in order to obtain a valid card.~~
- F. Any prospective miner who does not score at least 75% on the apprenticeship miners examination in order to renew his apprentice certificate will be given a second opportunity to retake the examination, provided that such person retakes and passes the examination within (30) days after the expiration date of the initial apprentice miner's card. In the event of failure to retake or pass the examination on the second opportunity the prospective miner must repeat the approved 40 hour pre-employment training program in order to retake the examination.



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(Plus all the volunteer  
help we can get)

STATE OF WEST VIRGINIA  
SECRETARY OF STATE

Charleston 25305

NOV. 20, 1986

MARK SCOTT  
DEPT. OF ENERGY

DEAR MARK,

THIS IS TO REMIND YOU OF THE DEADLINES ON THREE OF YOUR EMERGENCY RULES FILED IN THIS OFFICE.

1. SAFETY TRAINING FOR UNDERGROUND MINERS- FILED AS AN EMERGENCY RULE JUNE 17, 1986, NOTICE FOR HEARING FILED JULY 14, 1986. THE DEADLINE FOR FILING THIS RULE WITH THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IN ORDER TO KEEP THE EMERGENCY RULE EFFECTIVE IS DECEMBER 15, 1986
2. SAFETY TRAINING FOR SURFACE MINERS- FILED AS AN EMERGENCY RULE JUNE 17, 1986, NOTICE FOR HEARING FILED JULY 14, 1986. THE DEADLINE FOR FILING THIS RULE WITH THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IN ORDER TO KEEP THE EMERGENCY RULE EFFECTIVE IS DECEMBER 15, 1986
3. ROOF CONTROL- FILED AS AN EMERGENCY RULE ON OCTOBER 21, 1986. THE DEADLINE FOR FILING A NOTICE FOR PUBLIC HEARING WITH THIS OFFICE IN ORDER TO KEEP THIS EMERGENCY RULE EFFECTIVE IS DECEMBER 22, 1986.

IF I CAN BE OF ANY HELP FEEL FREE TO CALL.

RICH O. HARTMAN



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STATE OF WEST VIRGINIA  
SECRETARY OF STATE

Charleston 25305

July 29, 1986

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Department of Energy

RULE: Series 9 Rules and Regulations Governing the Safety Training Program for Prospective Surface Coal Miners In West Virginia, Amendment to Section 2.8 titled "Issuance and Expiration of Renewed Apprentice Miner's Cards."

DATE FILED AS AN EMERGENCY RULE: June 17, 1986

DECISION NO. 12-86

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.

KEN HECHLER  
Secretary of State

SECRETARY OF STATE  
1986 JUL 29 PM 4:54  
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# STATE OF WEST VIRGINIA SECRETARY OF STATE

## DECISION

## Emergency Rule Decision (ERD 12-86)

AGENCY: Department of Energy  
RULE: Series 9 Rules and Regulations Governing the Safety Training Program for Prospective Surface Coal Miners in West Virginia Amendment to Section 2.8 titled "Issuance and Expiration of Renewed Apprentice Miner's Cards."

DATE FILED AS AN EMERGENCY RULE: June 17, 1986

- par. 1 The Department of Energy (DOE) has filed as an emergency rule an amendment to the Series 9 rules titled Rules and Regulations Governing the Safety Training Program for Prospective Surface Coal Miners in West Virginia. The amendment is to Section 2.8 titled "Issuance and Expiration of Renewed Apprentice Miner's Cards."
- par. 2 The Series 9 rule establishes the training requirements and programs for certification as an apprentice and an underground miner as well as approval for instructors. The amendment to Section 2.8 is to remove the requirement of an apprentice to retake the 80 hour training program prior to renewal examination. The amendment allows retaking of the examination on two attempts. Failure to pass the examination after two attempts will only then require a retaking of the 80 hour training program.
- par. 3 West Virginia 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 if its statutory authority in promulgating the emergency rule; or 3) can show than an emergency exists justifying the promulgation of an emergency rule.
- par. 4 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(a)].

par. 5 (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. 6 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD 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. 7 The Department of Energy has filed this emergency rule with supporting documents with the Secretary of State on June 17, 1986.

par. 8 It is the determination of the Secretary of State that the Department of Energy has complied with the procedural requirements of WV Code §29A-3-15.

par. 9 (B) Statutory Authority -- WV Code §22-1-15 reads in part:

*§22-1-15. Commissioner's authority to promulgate rules and regulations.*

*The commissioner shall have the power and authority to propose or promulgate rules and regulations to organize the department and to carry out and implement the provisions of this chapter and chapter twenty-two-a [22A-1-1 et seq.] of this code.*

par. 10 WV Code §22A-1A-2 reads in part:

*§22A-1A-2. - Division of mines and minerals; purposes; rules and regulations.*

*The division is hereby given authority, where authorized and in the manner prescribed in this chapter, to enact such rules and regulations as may be necessary to effectuate the above-stated purposes, all under the supervision, review and approval of the commissioner. (1985, c.77.)*

par. 11 WV Code §22-10-3 reads in part:

*§22-10-3. Permit of apprenticeship-underground miner.*

*A permit of apprenticeship-underground miner shall be issued by the director to any person who has demonstrated by examination a knowledge of the subjects and skills pertaining to employment in underground miners, including, but not limited to, general safety, first aid, miner and operator rights and responsibilities, general principles of electricity, general mining hazards, roof control, ventilation, mine health and sanitation, mine mapping, state and federal mining laws and regulations and such other subjects as may be required by the board of miner training, education and certification.*

- par. 12 It is the determination of the Secretary of State that the Department of Energy has not exceeded its statutory authority by adopting this amendment to their Series 9 rule.
- par. 13 (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. 14 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. 15 The Department of Energy claims that this rule is to prevent "substantial harm to the public interest."
- par. 16 The facts and circumstances as presented by the Department of Energy are as follows:
- (A) The previous rule required an apprentice retake the 80 hour training program and examination prior to renewal of his card.
  - (B) This requirement delays re-employment of miners since the training is offered irregularly.
  - (C) The need for re-training is unnecessary for those who pass the examination.
  - (D) Over the last 6 months, approximately 100 individuals have requested such a change to enable them to be re-employed.
- par. 17 As stated in ERD 1-86, par. 19 and 20, economic health of particular areas does constitute a public interest and that harm to only one area of the state qualifies for statewide concern.
- par. 18 The rule will affect the employment opportunities of approximately 1000 persons in a positive manner with no loss of safety, as determined by the WV Board of Coal Mine Health and Safety.

- par. 19 The Secretary of State determines that the Department of Energy has demonstrated the need to make effective this proposal.
- par. 20 It is the decision of the Secretary of State that this proposal by the Department of Energy is in procedural compliance with WV Code 29A-3-15; does not exceed the statutory authority of the Department of Energy; and that the facts and circumstances presented constitute an emergency. Therefore, the Secretary of State decides that this emergency rule should be approved.
- par. 21 This decision shall be cited as Emergency Rule Decision 12-86 or ERD 12-86 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Department of Energy, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER  
SECRETARY OF STATE

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE

Entered \_\_\_\_\_ THIS DATE July 29, 1986  
ADMINISTRATIVE LAW DIVISION