

WEST VIRGINIA  
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #7

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

NOTICE OF AN EMERGENCY RULE

AGENCY: West Virginia Department of Energy TITLE NUMBER: 38

CITE AUTHORITY: West Virginia Code 22A-1A-34

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 8

TITLE OF RULE BEING AMENDED: Rules and Regulations Governing the  
Submission and Approval of a Comprehensive Mine Safety Program for  
Coal Mining Operations in the State of West Virginia

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: N/A

TITLE OF RULE BEING FILED AS AN EMERGENCY: \_\_\_\_\_

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

See Attachment

Use Additional Sheets If Necessary.

Roger T. Hall  
Roger T. Hall

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WEST VIRGINIA ADMINISTRATIVE REGULATIONS

DEPARTMENT OF ENERGY

TITLE 38 SERIES 8

TITLE: RULES AND REGULATIONS GOVERNING THE SUBMISSION AND  
APPROVAL OF A COMPREHENSIVE MINE SAFETY PROGRAM FOR  
COAL MINING OPERATIONS IN THE STATE OF WEST VIRGINIA

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## I N D E X

TITLE: Rules and Regulations Governing the Submission and Approval of  
a Comprehensive Mine Safety Program for Coal Mining Operations  
in the State of West Virginia

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WEST VIRGINIA ADMINISTRATIVE REGULATIONS

DEPARTMENT OF ENERGY

TITLE 38 SERIES 8

FILED

1989 JUL 11 AM 9:04

OFFICE OF WEST VIRGINIA

TITLE: Rules and Regulations Governing the Sumission and ~~Approval~~ <sup>Approval</sup> of  
a Comprehensive Mine Safety Program for Coal Mining Operations  
in the State of West Virginia

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Section 38.8.1 General

1.1 Authority - These rules and regulations are issued under authority of West Virginia Code Chapter 22A, Article 1A, Section 34.

1.2 Effective Date - These rules and regulations were promulgated on the \_\_\_\_\_ day of \_\_\_\_\_, 1989, and became effective on the \_\_\_\_\_ day of \_\_\_\_\_, 1989.

1.3 State Register - These rules and regulations were published in the State Register in the Office of the Secretary of State on the \_\_\_\_\_ day of \_\_\_\_\_, 1989.

Section 38.8.2 Preamble: Comprehensive Mine Safety Program for Coal Mining Operations in the State of West Virginia

2.1 Purpose. The primary goal of Chapter 22A, Article 1A, Section 34 of the Code is to protect the health and safety of this State's coal miners by increasing safety awareness, and by providing a safe work place through the development and implementation of comprehensive safety programs for each coal mine in the State. The purpose of these regulations is to implement the mandate of Chapter 22A, Article 1A, Section 34 of the Code by requiring each coal operator to develop a comprehensive safety program for each active mine, and by detailing the requirements for such programs. In implementing such mandate, it is recognized that different types of safety programs may be developed for each mine, depending upon the output of the particular mine, the number of employees of the particular mine, the location of the particular mine, and the physical features of the particular mine.

Section 38.8.3 Definitions

3.1 Unless the context in which a word or phrase appears clearly requires a different meaning, all terms used in these rules and regulations, which are not defined herein, shall have the meanings set forth in Chapter 22A, Article 1A, Section 1 of the Code.

(a) Active Mining Operation: The term "active mining operation" shall mean, when used herein, any active surface mining operation or active underground mining operation.

- 1) The term "active underground mining operation" shall mean an underground coal mine which is ventilated, and in which miners are ~~extracting coal from its natural deposit~~ employed.
- 2) The term "active surface mining operation" shall mean a surface coal mine where ~~the operator's direct activity and the miners' direct work is for the recovery of coal from its natural deposit~~ miners are employed.

(b) Comprehensive Mine Safety Program: The term "comprehensive mine safety program," "comprehensive safety program," or "program" shall mean the particular safety program at each mine as required in Chapter 22A, Article 1A, Section 34 of the Code, which is developed and submitted by the coal operator, approved by the Director, and includes such level of the safety program components set forth in Section 38.8.7 (7.2) of these rules and regulations as the operator deems appropriate. Such program shall include and address the extraction, production, processing and preparation activities ~~of the active mining operation~~ conducted by the mine operator, or persons contracted by the mine operator.

(c) Code: The term "Code" shall mean the Code of West Virginia of 1931, as amended.

(d) Director: The term "Director" shall mean the Director of the Division of Health, Safety and Training of the West Virginia Department of Energy. ~~Department of Mines~~.

(e) Mine: The term "mine," when used herein, shall mean any "surface coal mine" or "underground coal mine" as defined herein.

(f) Surface Coal Mine: The term "surface coal mine" shall mean a surface area of land, and all structures, facilities, machinery, tools, equipment, excavations, and other property, real or personal, placed upon or above the surface of such land by any person, which are used in, or to be used in, or resulting from, the work of extracting coal from its natural deposits in the earth by any means or method, and the work of preparing the coal so extracted, and includes custom coal preparation facilities. It is identified by one Federal identification number.

(g) Underground Coal Mine: The term "underground coal mine" shall mean a mine as defined in Chapter 22A, Article 1A, Section 1(a)(6) of the Code.

#### Section 38.8.4 Responsibility for Comprehensive Mine Safety Programs

4.1 The design, development, submission, implementation, evaluation and modification of the comprehensive mine safety program shall be the responsibility of the operator of each mine.

Section 38.8.5 Submission of Initial Comprehensive Mine Safety Programs

5.1 Within six (6) months of the effective date of these rules and regulations, each operator shall submit for approval to the Director a written comprehensive safety program for each active mine.

~~5.2 All operators of new mines and of inactive mines for which a comprehensive safety program has not been approved are required to notify the Director when active mining operations begin or resume and shall submit to the Director within ninety (90) days after the initiation or resumption of active mining operations a comprehensive mine safety program; provided, however, that if active mining operations are initiated or resumed within six (6) months of the effective date of these rules and regulations, then the operator shall submit its comprehensive safety program within the six (6) month period or within the ninety (90) calendar day period, whichever is greater.~~ All operators of new mines shall submit a comprehensive mine safety program, and have such program approved by the Director prior to commencement of work or operations by miners at the mine site.

5.3 After the effective date of these regulations, all mines, which are temporarily inactive but which have an approved comprehensive safety program, shall resume operations under the comprehensive safety program for that mine in effect at the time such mine was temporarily closed. If the operator elects to retain the existing comprehensive safety program, the operator shall notify the Director ~~within thirty (30) calendar days after resuming active mining operations~~ prior to the resumption of work by miners at the mine. If the operator elects to modify the existing comprehensive safety program, the operator shall submit such modifications to the Director within 90 calendar days after resuming active mining operations.

Section 38.8.6 Mine Evaluation for Development of the Initial Comprehensive Mine Safety Program; Submittals to Director

6.1 In developing the initial comprehensive safety program, the operator shall analyze the various program components, contained in Section 38.8.7 of these rules and regulations, in conjunction with the evaluation criteria provided in Section 8.2 of these rules and regulations, and shall take into consideration the output of the particular mine, the number of employees of the particular mine, the location of the particular mine, or any other aspect of the particular mine deemed relevant by the operator. Based upon this analysis and evaluation of the type of safety program needed at a particular mine, the operator shall proceed to develop a comprehensive mine safety program composed of the appropriate components contained in Section 38.8.7 of these rules and regulations, and a plan and appropriate procedures for implementing each of the components of the program.

6.2 Each operator shall submit to the Director for approval a comprehensive mine safety program in accordance with these rules and regulations. In addition, each operator shall submit the following:

- (1) A statement that the analysis and evaluation required by Section 6.1 of these rules and regulations has been completed;
- (2) A statement indicating which process the operator has selected, consistent with Section 11.1 of these rules and regulations, to permit the employees of the mine an opportunity to review and comment on the proposed program;
- (3) A list of safety instructors and their certifications, and/or qualifications, who will have primary responsibility for planning and conducting safety training at the mine;
- (4) A statement that the proposed comprehensive mine safety program was posted in accordance with Section 11.4 of these rules and regulations; and
- (5) The name of the person or persons representing the operator, including his title or position and mailing address or telephone number, who can be notified by the Director for all matters concerning the operator's comprehensive mine safety program.

6.3 Within ~~ninety~~ ~~(90)~~ thirty (30) calendar days after submission of the initial comprehensive safety program, the Director shall either approve the program as submitted, or shall reject and return the program to the operator for modification and resubmission, stating in detail the reasons for such rejection. If the program is rejected, the Director shall give the operator a reasonable length of time to modify and resubmit such program.

#### Section 38.8.7 Primary Safety Program Components

7.1 Different types of comprehensive mine safety programs may be developed for each mine, depending upon the output of the particular mine, the number of employees of the particular mine, the location of the particular mine, the physical features of the particular mine, or any other aspect of the particular mine deemed relevant by the operator. Depending upon the safety program needs of a particular mine, the comprehensive mine safety program may include any or all of the components contained in Section 7.2 of these rules and regulations.

7.2 A comprehensive mine safety program may include:

- (1) The operator's safety policy for each mine;
- (2) The operator's policies regarding personal safety protection of each worker (hard hats, shoes, etc);
- (3) Safety training programs and objectives including any or all of the following:
  - (a) Classroom training;
  - (b) Workplace training;
  - (c) Safety meetings, and
  - (d) Informal training

- (4) The operator's practices and procedures for promoting:
  - (a) Safe working practices for personnel,
  - (b) Safe working conditions in the mine environment, and
  - (c) Safe working practices for machinery, equipment, and systems.
- (5) The operator's emergency provisions and procedures at the mine;
- (6) The operator's procedures for accident investigation and reporting, which may include:
  - (a) Investigation,
  - (b) Filing,
  - (c) Analysis, and
  - (d) Follow-up
- (7) The operator's practices and procedures for comprehensive mine safety program promotion and enforcement; and
- (8) Such other components deemed necessary by the operator to effectuate the goals of Chapter 22A, Article 1A, Section 34 of the Code.

#### Section 38.8.8 Annual Review of the Comprehensive Mine Safety Program

3.1 Each operator shall conduct an annual review of the comprehensive mine safety program in effect at each mine. The purpose of the review shall be to determine the effectiveness of the comprehensive mine safety program by evaluating the components of the program to determine whether modifications to the existing program are necessary and desirable.

(a) Each operator shall submit to the Director within thirty (30) days after the anniversary date of the program, a report which shall contain the findings of the annual review, a statement indicating whether as a result of such review, modifications to the existing program are necessary, and if applicable, proposed modifications to the existing program. When modifications to the existing program are submitted, the operator may request, and the Director may issue, temporary approval of requested modifications pending the Director's final review and approval.

(b) The Director will review the annual report submitted by the operator and will either approve the report, or reject the report, stating in detail the reasons for rejection. The reasons for rejection may include proposed changes to the program deemed necessary by the Director and not included by the operator.

(c) If rejected, the Director shall give the operator a reasonable period of time to modify and resubmit such report and proposed modifications. If within thirty (30) calendar days subsequent to receipt of the report or proposed modifications by the Director, no action has been taken by the Director, the proposed report and modifications shall be considered approved.

(d) The anniversary date of the program shall be the date the initial program was approved by the Director.

8.2 The annual evaluation conducted pursuant to subsection 8.1 of these rules and regulations, shall include a review of the following items relating to a particular mine:

- (a) Accident rate;
- (b) Accident distributions;
- (c) A review of violations written under Chapter 22A, Article 1A, Section 34 of the Code; and
- (d) Fatal accidents and serious injuries as defined by Title 36, Series 19, Section 3.2(2).

8.3 At the discretion of the mine operator, other sources of information may be used to ascertain performance of the safety program in the annual evaluation. They may include, but are not limited to:

- (a) Mine conditions or changes in mine conditions;
- (b) Mining methods or equipment or changes in mining methods or equipment at the mine;
- (c) Number of working sections at a mine or changes in the number of working sections at the mine;
- (d) Personnel or management, or changes in personnel or management;
- (e) Instructors responsible for safety training or changes in instructors responsible for safety training; and
- (f) Findings from safety observations conducted by responsible mine officials.

#### Section 38.8.9 Modifications

9.1 The operator, in addition to any revisions or modifications to the mine safety program made in accordance with Section 8.1 of these rules and regulations, may submit at any time, proposed modifications or revisions along with the reasons therefore, to the Director.

9.2 Within thirty (30) days after receipt by the Director of any proposed revisions or modifications to the program, the Director shall either approve the revisions, or reject the revisions stating in detail the reasons for such rejection. If within 30 days of receipt of such revisions by the Director no action has been taken, the proposed revisions shall be taken as approved.

9.3 When revisions to a program are submitted to the Director, the operator may request, and the Director may issue, temporary approval of such revisions pending the Director's final review and approval.

9.4 The Director may require modifications to a comprehensive mine safety program at any time following the investigation of a fatal accident or serious injury, as defined by Title 36, Series 19, Section 3.2(2), if such modifications are warranted by the findings of the investigation.

Section 38.8.10 Review Procedure

10.1 If a comprehensive mine safety program, modifications thereto, or an annual report is rejected by the Director pursuant to Sections 6.3, 8.1, or 9.2 of these rules and regulations, the operator shall be entitled to a hearing before the Director to contest such rejection.

10.2 The operator shall notify the Director within fifteen (15) days of the receipt of such rejection that he is requesting a hearing and shall state specifically his reasons therefore. A hearing shall be scheduled within ten (10) days of the receipt of the request for hearing, and shall be held within twenty (20) days of such request.

10.3 Any operator adversely affected by a decision rendered by the Director pursuant to subsection 10.2 of these rules and regulations, may appeal such decision in accordance with Chapter 29A, Sections 5 and 6 of the Code.

Section 38.8.11 Right of Mine Employees to Review and Comment on the Comprehensive Mine Safety Program; Posting Requirements

11.1 Each employee of the mine shall be afforded an opportunity to review and submit comments to the Director regarding the initial submittal to the comprehensive mine safety program, any modifications or revisions to the program and the annual report. The operator shall satisfy this requirement by selecting one of the two methods set out in (a) or (b) below.

(a) The operator may establish a safety committee at the mine. This committee shall consist of at least three (3) non-supervisory employees. Where feasible, the committee should have representation on each working shift. The requirements for such committee may be satisfied with an existing committee for the mine. It shall be the responsibility of the operator to provide this committee with the opportunity to review the initial comprehensive safety program, any modifications or revisions thereto, and the annual report, and to provide written comments and suggestions to the Director with copies to the operator. Such opportunity to review shall be satisfied by compliance with subsection 11.4 of these rules and regulations. It shall be the responsibility of the committee to ensure that all employees of the mine have the opportunity to review and comment on the proposed comprehensive safety program, any proposed modifications or revisions thereto, and the annual report.

(b) The operator may hold a meeting of all employees of the mine at which meeting the operator shall provide an in-depth review of each of the components of the comprehensive safety program for the mine. The

purpose of such meeting is to provide each employee of the mine, the opportunity to review and comment on the proposed comprehensive safety program, any modifications or revisions thereto, and the annual report. Such meeting shall be held prior to the submittal of the initial program, the submittal of any modifications or revisions to such program, and the submittal of the annual report. The operator shall notify the Director and post notice on the mine bulletin board of the time and place of the meeting at least ten (10) calendar days prior to the meeting. The Director or his authorized representative has the right to attend such meeting.

11.2 If the operator selects a safety committee (11.1(a)) to satisfy the requirements of subsection 11.1, he shall provide a minimum of eight (8) hours annual instruction for each member of the safety committee at each mine, which instruction shall include materials and training relevant to the review and evaluation of the components of the comprehensive safety program. This instruction may be satisfied through other instruction and training programs the operator is required to provide, as approved by the Director.

11.3 Notwithstanding which option the operator elects to satisfy the requirements of this section, each employee of the mine has the right to review the proposed comprehensive mine safety program, any modifications or revisions thereto, and the annual report, and to provide comments to the Director.

11.4 A copy of the proposed comprehensive mine safety program, proposed modifications or revisions thereto, and the annual report, shall be posted on the mine bulletin board, as provided in Chapter 22A, Article 1A, Section 16(a), of the Code, for at least fifteen (15) days prior to the date of submittal to the Director.

11.5 A copy of the current approved comprehensive mine safety program shall be made available to any employee of the mine upon request and shall also be posted on the mine bulletin board as provided in Chapter 22A, Article 1A, Section 16(a) of the Code.

11.6 A copy of the current approved comprehensive mine safety program shall be provided to any independent contractor employed by the mine operator at the mine. The independent contractor and his employees shall comply with the applicable comprehensive mine safety program in accordance with Title 36, Series 20, Section 2.1(b). Before independent contractors are allowed to perform any work at the mine site, they shall have an approved comprehensive mine safety program; either by drafting their own program, or adopting the program in effect at the company for which they are contracting work.

#### Section 38.8.12 Miscellaneous

12.1 The Director may develop forms and guidelines to facilitate development, review, and approval of the comprehensive safety program submitted by each operator; provided, however, that such forms and guidelines cannot modify or expand the requirements of these rules and regulations.

KEN HECHLER  
Secretary of State

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(Plus all the volunteer  
help we can get)

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE Aug. 16, 1989  
ADMINISTRATIVE LAW DIVISION

August 16, 1989

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Department of Energy

RULE: Amendments to Series 8; Rules and Regulations Governing the Submission and Approval of a Comprehensive Mine Safety Program for Coal Mining Operations in the State of West Virginia

DATE FILED AS AN EMERGENCY RULE: July 11, 1989

DECISION NO. 16-89

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

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

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FILED IN THE OFFICE OF  
THE SECRETARY OF STATE

THIS DATE \_\_\_\_\_  
ADMINISTRATIVE LAW DIVISION

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(Plus all the volunteer  
help we can get)

STATE OF WEST VIRGINIA  
SECRETARY OF STATE

Charleston 25305

DECISION      EMERGENCY RULE DECISION  
(ERD 16-89)

AGENCY: Department of Energy  
RULE: Amendments to Series 8, Rules and Regulations  
Governing the Submission and Approval of a Comprehensive Mine Safety Program for Coal Mining Operations in the State of West Virginia

FILED AS AN EMERGENCY RULE: July 11, 1989

- par. 1 The Department of Energy has filed as emergency amendments to the above Series 8.
- par. 2 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 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(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 Fire Commission (LRMRC).
- par. 5 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. 6 Energy has filed this emergency rule with supporting documents with the Secretary of State on July 11, 1989 and with the LRMRC on July 14, 1989.

par. 7 It is the determination of the Secretary of State that Energy 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-1A-34 reads:

*§22A-1A-34. Mandatory safety programs; penalties.*

*(a) The commissioner, in consultation with the state board of coal mine health and safety, shall promulgate rules and regulations in accordance with chapter twenty-nine-a of this code, detailing the requirements for mine safety programs to be established by coal operators, as provided in subsection (b) of this section. The regulations may require different types of safety programs to be developed, depending upon the output of the particular mine, the number of employees of the particular mine, the location of the particular mine, the physical features of the particular mine or any other factor deemed relevant by the commissioner.*

par. 9 WV Code §5F-2-1(b) (21) states:

*(b) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of commerce, labor and environmental resources:*

*(21) Department of energy provided for in article one, chapter twenty-two of this code.*

par. 10 §5F-2-2(a) (11) further states:

*Promulgate rules, as defined in section two, article one, chapter twenty-nine-a of this code, to implement and make effective the powers, authority and duties granted and imposed by the provisions of this chapter, such promulgation to be in accordance with the provisions of chapter twenty-nine-a of this code.*

par. 11 It is the determination of the Secretary of State that Energy has not exceeded its statutory authority in promulgating this emergency rule.

par. 12 (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. 13 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. 14 The facts and circumstances as presented by the Tax Department are as follows:

The Department of Energy is mandated to require the operator of each mine to file with the Director of the Division of Mine Health and Safety, a comprehensive mine safety plan (See Code of West Virginia 22A-1A-34). This provision further authorizes the Commissioner of the Department of Energy to promulgate regulations in consultation with the Board of Coal Mine Health and Safety, which governs the filing of such programs. The current regulations require that such filing be made ninety (90) days prior to coal production. This would insure that a mine safety program would be in effect and clearly understood by workers prior to initiation of underground operations. Prior knowledge of the operative mine safety plan is, in our view, vitally important to the safety of underground miners. The Department's experience under the current regulations is that the subject plan has not been consistently filed in a timely manner; therefore, our inspection and enforcement staff are often times unaware that production has commenced without a mine safety program in effect. The legislative rule being filed as an emergency would require the filing of the appropriate mine safety program at the time of permit application, thus assuring that the Department and the workers have prior knowledge of an approved program. To the extent that awareness of the mine safety plan is of vital importance to the safety and well being of coal miners, the filing of this regulation as an emergency rule is justified.

par. 15 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency.

par. 16 This decision shall be cited as Emergency Rule Decision 16-89 or ERD 16-89 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 Commission.



KEN HECHLER  
SECRETARY OF STATE

Entered \_\_\_\_\_