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August 23, 2012

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: WV Office of Miners' Health, Safety and Training

RULE: 48CSR7, Amendments, Rules and Regulations Governing the Standards for Certification of Coal Mine Electricians

DATE FILED AS AN EMERGENCY RULE: July 13, 2012

DECISION NO. 19-12

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.



NATALIE E. TENNANT
Secretary of State

EMERGENCY RULE DECISION
(ERD 19-12)

AGENCY: WV Office of Miners' Health, Safety and Training
RULE: 48CSR7, amendment, Rules and Regulations Governing the
Standards for Certification of Coal Mine Electricians
FILED AS AN EMERGENCY RULE: July 13, 2012

- par. 1 The WV Office of Miners' Health, Safety and Training (Office) has filed the above amendments to an existing 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 July 13, 2012 and with the LRMRC July 13, 2012.
- 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-7-6 reads:

§22A-7-6. Duties of the director and office.

The director shall propose rules for legislative approval, pursuant to chapter twenty-nine-a of this code, that are necessary to establish a program to implement the provisions of this article. Such program shall include, but not be limited to, implementation of a program of instruction in each of the miner occupational specialties and the conduct of examinations to test each applicant's knowledge and

understanding of the training and instruction which he or she is required to have prior to the receipt of a certificate.

1. The director is authorized and directed to utilize state mine inspectors, mine safety instructors, the state mine foreman examiner, private and public institutions of education and such other persons as may be available in implementing the program of instruction and examinations.

The director may, at any time, make such recommendations to the board as he or she may deem appropriate.

The director shall supply any information upon request of the board as long as the information is not in violation of any other laws.

The director is authorized and directed to utilize such state and federal moneys and personnel as may be available to the office for educational and training purposes in the implementation of the provisions of this article.

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:

An unsafe development has evolved in the coal industry where apprentice electricians are performing electrical work without the necessary immediate or direct supervision of a certified electrician. This was never the intent of the apprentice electrician program; however, the existing rule can be read to allow this practice. Coal mine electricians frequently work on electrical circuits that may contain anywhere from 40 volts to well over 1000 volts. When working around this level of voltage, any mistake can be fatal. For an apprentice electrician to develop the necessary skills to safely perform electrical work in a coal mine, he/she needs the proper supervision of a certified electrician. The amendment of this rule provides for that supervision by requiring the supervising certified electrician to sign the documents verifying the apprentice's apprenticeship work

experience and is necessary for the immediate preservation of safety of the apprentice electricians. The rule also requires that all energized electrical work performed by an apprentice be done under the immediate supervision of a certified electrician and all other electrical work performed by an apprentice be done under the direct supervision of a certified electrician.

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). . . "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 19-12 or ERD 19-12 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the WV Office of Miners' Health, Safety and Training, the Attorney General and the Legislative Rule Making Review Committee.



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Secretary of State

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