

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #5

Do Not Mark In This Box

FILED

2015 JUL 30 P 3:12

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: Office of Miners' Health, Safety and Training TITLE NUMBER: 56

CITE AUTHORITY: W. Va. Code 22A-1-6

RULE TYPE: PROCEDURAL _____ INTERPRETIVE X

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

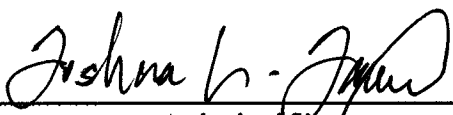
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 21

TITLE OF RULE BEING PROPOSED: Self-Contained Self-Rescue Device Immediate Reach Interpretive Rule

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS 09/01/2015


Authorized Signature



State of West Virginia
Earl Ray Tomblin, Governor

WV Office of Miners' Health, Safety & Training
Eugene White, Director
#7 Players Club Drive, Suite 2, Charleston, WV 25311-1626
Telephone 304-558-1425 ■ Fax 304-558-1282
www.wvminesafety.org

MEMORANDUM

TO: The Honorable Natalie E. Tennant
Secretary of State

FROM: Eugene White, Director
Office of Miners' Health, Safety and Training

DATE: July 30, 2015

RE: Interpretive Rule
Title 56, Series 21
Self-Contained Self-Rescue Device
Immediate Reach Interpretive Rule

The Office of Miners' Health, Safety and Training has received no written comments on the above-referenced rule.

-
- Region One ■ 14 Commerce Dr., Suite 1 - Westover, West Virginia 26501 ■ Telephone 304-285-3268 ■ Fax 304-285-3275
 - Region Two ■ 891 Stewart St. - Welch, West Virginia 24801-2311 ■ Telephone 304-436-8421 ■ Fax 304-436-2100
 - Region Three ■ 137 Peach Court, Suite 2 - Danville, West Virginia 25053 ■ Telephone 304-369-7823 ■ Fax 304-369-7826
 - Region Four ■ 550 Industrial Dr. - Oak Hill, West Virginia 25901-9714 ■ Telephone 304-469-8100 ■ Fax 304-469-4059

Brief Summary of Proposed Rule

Office of Miners' Health, Safety and Training

Title 56 Series 21

The Office of Miners' Health, Safety and Training proposes to clarify its interpretation of the term "immediate reach" found in W. Va. Code § 22A-2-55(f)(1) wherein the statute requires that an individual shall either wear a self-contained self-rescue device, or have one accessible within his/her immediate reach. The agency interprets immediate reach to mean within arm's length that being no more than three (3) feet from the individual.

Statement of Circumstances

Office of Miners' Health, Safety and Training

Title 56 Series 21

The Office of Miners' Health, Safety and Training is charged with enforcing West Virginia's mining laws which includes statutes and regulations pertaining to miners' safety. One safety device which a miner is required to possess when underground is a self-contained self-rescue device. Possession of a self-contained self-rescue device while underground is mandated in W. Va. Code § 22A-2-55(f)(1) wherein the statute provides that the individual shall either wear the self-contained self-rescue device, or have it within his/her immediate reach. The term immediate reach is not defined in the statute, but is referenced elsewhere in the regulations pertaining to the training objectives for underground coal mine health and safety training courses (W. Va. Code R. § 48-2-4.4.7(11)) as being within "easy reach (three (3) feet)". The agency interprets "immediate reach" as being synonymous with "easy reach" in that both mean within arm's length which is a distance of no more than three (3) feet from an individual. The interpretive rule will clarify that the language found in the statute is in harmony with that found in the regulation and provide a bright line standard for enforcement.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Self-Contained Self-Rescue Device Immediate Reach Interpretive Rule

Type of Rule: Legislative Interpretive Procedural

Agency: Office of Miners' Health, Safety and Training

Address: 7 Players' Club Drive
Charleston, WV 25311

Phone Number: 304-558-1425 Email: www.wvminesafety.org

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The interpretive rule will have no fiscal impact on state government.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: Self-Contained Self-Rescue Device Immediate Reach Interpretive Rule

Rule Title: _____

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

The interpretive rule will have no fiscal impact on the Office of Miners' Health, Safety and Training.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

The interpretive rule is to clarify the Office of Miners' Health, Safety and Training's interpretation of the term "immediate reach" as found in W. Va. Code 22A-2-55(f)(1) and, as such, will have no fiscal impact on the state.

Date: 6/26/15

Signature of Agency Head or Authorized Representative

Gregory White

56CSR21

TITLE 56
INTERPRETIVE RULE

WEST VIRGINIA OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING

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SERIES 21
SELF-CONTAINED SELF-RESCUE DEVICE
IMMEDIATE REACH INTERPRETIVE RULE

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§56-21-1. General.

1.1. Scope and Purpose. -- The purpose of this interpretive rule is to disclose how the Office of Miners' Health, Safety and Training will interpret, clarify and explain the term immediate reach, codified in W. Va. Code § 22A-2-55(f)(1).

1.2. Authority. -- W. Va. Code § 22A-1-6.

1.3. Filing Date. -- 07/30/2015.

1.4. Effective Date. -- 9/01/2015.

§56-21-2. Immediate Reach.

2.1. The Office of Miners' Health, Safety and Training notes that pursuant to W. Va. Code § 22A-2-55(f)(1), when an individual is underground the self-contained self-rescue device must be worn, or located within immediate reach. The Office of Miners' Health, Safety and Training interprets immediate reach to mean arm's reach which is a distance of no more than three (3) feet from the individual.

56CSR21

**TITLE 56
INTERPRETIVE RULE**

WEST VIRGINIA OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING

**SERIES 21
SELF-CONTAINED SELF-RESCUE DEVICE
IMMEDIATE REACH INTERPRETIVE RULE**

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