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Office of the Secretary of State
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, West Virginia 25305

Natalie E. Tennant

Secretary of State
State of West Virginia

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Telephone: (304) 558-6000
Toll Free: 1-866-SOS-VOTE
Fax: (304) 558-0900
www.wvsos.com

June 9, 2016

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Miners' Health Safety and Training

RULE: 56CSR22, New Rule, Certification, Recertification and Training of EMT-Miners and Certification of EMT-M Instructors

DATE FILED AS AN EMERGENCY AMENDMENT: June 7, 2016

DATE FIRST FILED AS AN EMERGENCY RULE: April 29, 2016

DECISION NO. 2-16

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.

A handwritten signature in cursive script that reads "Natalie E. Tennant".

NATALIE E. TENNANT
Secretary of State

EMERGENCY RULE DECISION
(ERD 2-16)

AGENCY: Miners' Health Safety and Training
RULE: 56CSR22, New Rule, Certification, Recertification and Training of
EMT-Miners and Certification of EMT-M Instructors
DATE FILED AS AN EMERGENCY AMENDMENT: June 7, 2016
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- par. 1 The Miners' Health Safety and Training (OMHST) has filed the above emergency amendment to a proposed 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 OMHST filed this amendment to an emergency rule with supporting documents with the Secretary of State June 7, 2016 and with the LRMRC June 7, 2016.
- par. 7 It is the determination of the Secretary of State that the OMHST 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 §16-4C-6C(g) reads:
- (g) The Director of Miners' Health, Safety and Training shall propose rules for legislative approval, pursuant to the provisions of article three, chapter twenty-nine-a of this code, in consultation with the Board of Miner Training, Education and Certification, and may propose emergency rules, to:*

- (1) Establish emergency medical technician-mining certification and recertification courses and examinations;*
- (2) Authorize providers to administer the certification and recertification courses and examinations, including mine training personnel, independent trainers, community and technical colleges, and Regional Educational Service Agencies (RESA): Provided, That the mine training personnel and independent trainers must have a valid cardiopulmonary resuscitation (CPR) certification and must be an approved MSHA or OSHA certified instructor;*
- (3) Establish a fee schedule: Provided, That the application fee may not exceed \$10 and there shall be no fee for a certificate; and*
- (4) Implement the provisions of this section.*

par. 9 It is the determination of the Secretary of State that the OMHST' 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 OMHST' are as follows:

Currently the Office of Emergency Medical Services is the state agency charged with the duty to administer, certify and re-certify EMT-Miners (EMT -M). With the passage of H. B. 4726, those duties will be transferred to the West Virginia Office of Miners' Health, Safety and Training (OMHST) beginning on June 9, 2016, the effective date of the legislation.

Beginning June 9, 2016, OMHST will be responsible for certifying any new EMT-M's as well as re-certifying those EMT-M's whose EMT-M certifications are expiring. §56-22 sets forth how OMHST will administer, certify and re-certify those EMT-M's. Without § 56-22 approved as an emergency, OMHST will not be able to certify new EMT-M's nor will it be able to re-certify those EMT -M' s whose certification will expire before the Legislative Rule is approved by the 2017 WV Legislature.

W.VA. Code§ 29A-3-15(f) states:

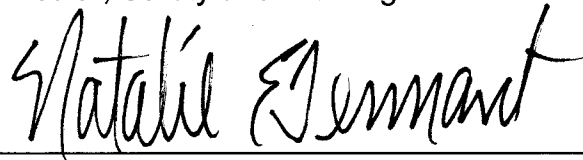
For the purposes of this section, an emergency exists when the promulgation of an emergency rule is necessary (1) for the immediate preservation of the public peace, health, safety or welfare, (2) to comply with a time limitation established by this code or by a federal statute or regulation, or (3) to prevent substantial harm to the public interest.

As you probably know, an EMT-M is a coal miner employed by a coal operator who is the first responder to all mine accidents. The EMT-M is responsible for providing first aid to the accident victim and is also responsible for transporting the accident victim to the surface of the coal mine where a local ambulance or HealthNet helicopter is waiting to transport the accident victim to a hospital.

Without the Secretary of State approving §56-22 as an emergency, there will be a year long gap in the certification of new EMT-M's and an increasing shortage of existing EMT -M's whose certifications expire with no mechanism in place for re-certification. This will have an immediate impact on the health and safety of coal miners who are accident victims as well as creating a substantial harm to the public's interest in insuring the safety of all our coal miners employed in this state. Thus, satisfying both W.VA. Code§ 29A-3-IS(f)(l) & (3).

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 the public peace, health, safety or welfare" "to prevent substantial harm to the public interest"

par. 14 This decision shall be cited as Emergency Rule Decision 2-15 or ERD 2-16 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Miners' Health, Safety and Training.



NATALIE E. TENNANT
Secretary of State

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