

## MEMORANDUM

TO: E. Ashley Summitt, Esq.

FROM: Barry L. Koerber, Assistant Attorney General  
Assigned to the West Virginia Office of Miners' Health, Safety and Training

RE: W. Va. Code R. § 56-22

DATE: May 23, 2016

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You have requested that I provide you with my reasoning as to why W. Va. Code R. § 56-22 (§ 56-22) meets the statutory requirements for purposes of being approved as an emergency rule.

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-3-15(f)(1) & (3).

Hopefully this Memorandum is helpful to you and if there is anything else you need to make this important decision, please do not hesitate to contact me.