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SECRETARY OF MINE

NOTICE OF EMERGENCY RULE

RULE TITLE: Title 36, Series 25 - Rules and Regulations Governing  
Roof Control Practices

The attached rule is filed as an Emergency Rule. The facts and circumstances constituting the emergency are as follows:

This rule provides that underground auger mines may have openings up to twenty-six (26) feet in width. Code 22A-2-25 as interpreted by the Supreme Court on July 10, 1985, and enforced by DOE officials on January 27, 1987, limits the openings in these mines to twenty (20) feet.

Immediate implementation is needed to enable these mines to continue to operate, and to operate safely. Under current underground auger mining technology, it is nearly impractical to mine in 20 foot openings and may create additional safety hazards to persons working in those mines.

This rule was recommended to the Board by the Mine Safety and Technical Review Committee, under authority of Code 22-6-4c.

*Mark A. Smith*

Chairman

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WEST VIRGINIA ADMINISTRATIVE REGULATIONS  
BOARD OF COAL MINE HEALTH AND SAFETY  
TITLE 36 SERIES 25  
(formerly Series 40)

TITLE: Rules and Regulations Governing Roof Control Practices

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WEST VIRGINIA ADMINISTRATIVE REGULATIONS

BOARD OF COAL MINE HEALTH AND SAFETY

TITLE 36 SERIES 25

(formerly Series 40)

TITLE: Rules and Regulations Governing Roof Control Practices

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BOARD OF COAL MINE HEALTH AND SAFETY

TITLE 36 SERIES 25  
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SECRETARY OF STATE

TITLE: Rules and Regulations Governing Roof Control Practices

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Section 36.25.1 General

1.1 Scope - This administrative rule establishes requirements for control of mine roof conditions, and for operation of roof bolting machines.

1.2 Authority - West Virginia Code 22-6-4.

1.3 Filing Date - July 18, 1985

1.4 Effective Date - August 30, 1985

Section 36.25.2 Definitions

2.1 All terms used in these rules and regulations, not defined herein, shall have the meanings set forth in Chapter 22A, Article 1A, Section 2 of the West Virginia Code.

Section 36.25.3 Removal of Roof Hazards

3.1 Prior to or during bolting operations in working places, the person responsible for performing such work shall immediately notify a supervisor if abnormal or hazardous conditions are encountered. No further work shall be performed until a supervisor examines the area where he has been informed that abnormal or hazardous conditions exist and directs the correction of such condition.

Section 36.25.4 Working Around Roof Bolting Machines

4.1 On all roof bolting machines except continuous mining machines with integral roof bolters, during the time that the ATRS system is being engaged against or retracted from the mine roof, all persons except those specified below shall be outby the last row of permanent roof supports. This requirement shall not apply to the equipment operator, provided that adequate protection is provided for the equipment operator while setting the ATRS.

#### Section 36.25.5 Roof Bolting Machines - Requirements

5.1 After January 1, 1985, roof bolting machines used in seams 48 inches or higher shall be equipped with a mechanical means of holding the drill steel during drilling operations, which minimizes the need for the equipment operator to handle the drill steel. The Director of the Department of Mines Energy may require such devices on roof bolting machines used in seams under 48 inches where the technology for such equipment to operate under these conditions is available.

#### Section 36.25.6 Notification When Pillaring is to Begin

6.1 In mines where pillar extraction (second mining) has not been previously performed, the following requirements shall be met before pillaring is begun:

- (a) The operator shall review the provisions of the approved roof control plan concerning pillar extraction with all persons to be performing such work, immediately prior to the start of such work.
- (b) The operator shall notify the district inspector in whose district the mine is located five (5) working days prior to the date pillaring is to begin. When deemed necessary the district inspector may require that he be present during the review of the approved roof control plan, provided that he can be present before pillaring is to begin.

#### Section 36.25.7 Underground Auger Mines - Special Requirements

7.1 Required support systems for mine openings exceeding twenty (20) feet. In underground auger mines, the mine openings may exceed twenty (20) feet in width, provided that: (1) the mine openings do not exceed twenty-six (26) feet; and (2) a combination full roof bolting plan/conventional roof control plan shall be developed and the roof maintained in strict compliance with Section 8 of the Series 20 Administrative Rules and Regulations of the Commissioner governing Roof Control. Said Series 20 regulations are hereby approved and incorporated by reference.



KEN HECHLER  
Secretary of State

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Deputy Secretary of State

BARBARA STARCHER  
Deputy Secretary of State

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Special Assistant

(Plus all the volunteer  
help we can get)

# STATE OF WEST VIRGINIA

## SECRETARY OF STATE

Charleston 25305

March 11, 1987

### NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Board of Coal Mine Health & Safety

RULE: Admendment to Series 25, Roof Control Practices

DATE FILED AS AN EMERGENCY RULE: January 28, 1987

DECISION NO. 5-87

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.

KEN HECHLER  
Secretary of State

SECRETARY OF STATE

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KEN HECHLER  
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# STATE OF WEST VIRGINIA

## SECRETARY OF STATE

Charleston 25305

### DECISION

### Emergency Rule Decision (ERD 5-87)

AGENCY: Board of Coal Mine Health and Safety  
RULE: Amendment to Series 25, Roof Control Practices  
DATE FILED AS AN EMERGENCY RULE: January 28, 1987

- par. 1 The Board of Coal Mine Health and Safety has filed an amendment to the above Series 25 by adding a new section titled Section 7, "Underground Auger Mines - Special Requirements."
- 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 if its statutory authority in promulgating the emergency rule; or 3) can show than 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 Committee (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 The Board of Coal Mine Health and Safety has filed this emergency rule with supporting documents with the Secretary of State on January 28, 1987.

par. 7 It is the determination of the Secretary of State that the Board has complied with the procedural requirements of WV Code §29A-3-15.

par. 8 (B) Statutory Authority -- WV Code §22A-2-25 reads in part:

*§22A-2-25. Roof control programs and plans; refusal to work under unsupported roof.*

*(a) Each operator shall undertake to carry out on a continuing basis a program to improve the roof control system of each coal mine and the means and measures to accomplish such system. The roof and ribs of all active underground roadways, travelways, and working places shall be supported or otherwise controlled adequately to protect persons from falls of the roof or ribs. A roof control plan and revisions thereof suitable to the roof conditions and mining systems of each coal mine and approved by the director, in consultation with the deputy directors of permitting and safety, health and training, shall be adopted and set out in printed form before new operations. The safety committee of the miners of each mine where such committee exists shall be afforded the opportunity to review and submit comments and recommendations to the director and operator concerning the development, modification or revision of such roof control plans. The plan shall show the type of support and spacing approved by the director. Such plan shall be reviewed periodically, at least every six months by the director, taking into consideration any falls of roof or rib or inadequacy of support of roof or ribs. A copy of the plan shall be furnished to the director or his authorized representative and shall be available to the miners and their representatives.*

par. 9 It is the determination of the Secretary of State that the Board has not exceeded its statutory authority by adopting this rule.

par. 10 (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. 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. 13 The Board cites the following facts and circumstances:

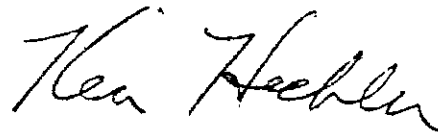
This rule provides that underground auger mines may have openings up to twenty-six (26) feet in width. Code §22A-2-25

as interpreted by the Supreme Court on July 10, 1985, and enforced by DOE officials on January 27, 1987, limits the openings in these mines to twenty (20) feet.

Immediate implementation is needed to enable these mines to continue to operate, and to operate safely. Under current underground auger mining technology, it is nearly impractical to mine in 20 foot openings and may create additional safety hazards to persons working in those mines.

This rule was recommended to the Board of Mine Safety and Technical Review Committee, under authority of Code §22-6-4c.

- par. 13 As stated in previous ERD's, the standards for acceptance as an emergency are lower in cases where the intent of the proposal is to prevent life or injury threatening conditions.
- par. 14 It is the decision of the Secretary of State that this proposal by the Board of Coal Mine Health and Safety is in procedural compliance with WV Code 29A-3-15; does not exceed the statutory authority of the Board of Coal Mine Health and Safety; and that the facts and circumstances presented constitute an emergency. Therefore, the Secretary of State decides that this emergency rule should be approved.
- par. 15 This decision shall be cited as Emergency Rule Decision 5-87 or ERD 5-87 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Board of Coal Mine Health and Safety, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER  
SECRETARY OF STATE

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SECRETARY OF STATE  
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STATE OF WEST VIRGINIA  
OFFICE OF THE GOVERNOR  
CHARLESTON 25305

ARCH A. MOORE, JR.  
GOVERNOR

January 28, 1987

The Honorable Ken Hechler  
Secretary of State  
State Capitol  
Charleston, West Virginia 25305

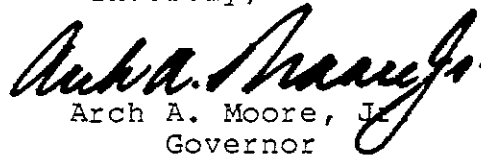
Dear Secretary Hechler:

Enclosed are regulations promulgated by the Board of Coal Mine Health and Safety on January 27, 1987. These regulations amend Title 36, Series 25, Rules and Regulations Governing Roof Control Practices.

In accordance with Executive Order No. 3-85, issued on February 21, 1985, I have reviewed and approved the filing of these regulations.

Please place these regulations in the State Register immediately, to be effective upon filing.

Sincerely,

  
Arch A. Moore, Jr.  
Governor

AAMJr:jrb

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DEPT. OF STATE