

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

Form #2

Do Not Mark In This Box

FILED

2010 APR 22 PM 2: 13

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: WV Board of Coal Mine Health and Safety TITLE NUMBER: 36

RULE TYPE: Legislative CITE AUTHORITY: 22A-6-4

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 44

TITLE OF RULE BEING AMENDED: MINE RESCUE REQUIREMENTS FOR THE OFFICE OF MINERS' HEALTH,  
SAFETY AND TRAINING

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON May 28th AT 5pm ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

1615 Washington Street East Charleston WV 25311

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



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## **WEST VIRGINIA BOARD OF COAL MINE HEALTH AND SAFETY**

1615 Washington Street, E. • Charleston, West Virginia 25311 • Telephone 304-558-1425 • Fax 304-558-6091

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### **PROPOSED REGULATIONS**

To: All persons interested in Rules and Regulations constructed by the Board of Coal Mine Health and Safety

From: Joel L. Watts, Administrator – BCMH&S

Subject: **MINE RESCUE REQUIREMENTS FOR THE OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING**, Title 36, Section 44

Date: 22 April 2010

End Date for Comments: 28 May 2010

Authority: §22.6.4

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The Board of Coal Mine Health and Safety is posting a proposed regulation which amends the physical requirements for participation on mine rescue teams.

You may send all written comments to

1615 Washington Street East  
Charleston, WV 25311

All comments must be post-marked by 28 May in order to be accepted by the Board for consideration.

**TITLE 36  
LEGISLATIVE RULES  
BOARD OF COAL MINE HEALTH AND SAFETY**

**SERIES 25  
MINE RESCUE REQUIREMENTS FOR THE OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING**

**§36-44-1. General**

1.1 Scope. This rule governs mine rescue requirements for the Office of Miners' Health, Safety and Training. This rule in no way should be construed as relieving mine operators from their requirement to either have their own mine rescue team or contract coverage.

1.2 Authority. WV Code 22-6-4.

1.3 Filing Date.

1.4 Effective Date.

**§36-44-2. Mine Rescue Requirements for the Office of Miners' Health, Safety and Training.**

2.1 The Director shall develop a mine emergency operation plan for the mine rescue teams that represent the Office of Miners' Health, Safety and Training that would include but is not limited to the following criteria:

(a) Establish and maintain 2 mine rescue stations within the OMHS&T; one located in the Northern area of the state, and one located in the Southern area of the state, at locations determined by the Director.

(b) To establish one (1) fully trained mine rescue team per each OMHS&T's regional office.

(c) The members assigned to the mine rescue and recovery work may be inspectors, instructors or other qualified employees of the office as the director deems necessary. The director shall employ additional employees as he deems necessary to fulfill the requirement of this section.

(d) To provide the necessary fully equipped mine rescue vehicles for each OMHS&T mine rescue station that would include but is not limited to cell phones, satellite telephone, landline telephones (teleconferencing), on-site radios and fax/copy machines, computers with mine mapping software (CAD) and modems; and any other equipment deemed necessary by the Director.

(e) To purchase new additional mine rescue equipment including but is not limited to mask mounted radio connections and permissible radios for underground wireless communications; new lifeline/communications reels with a "down hole" speaker microphone system; new additional handheld gas detectors and infra-red and electrochemical gas monitoring equipment, gas sampling tubing, satellite telephones and four channels of seismic inputs (geophones); and any other equipment as deemed necessary by the Director.

2.2 As used in this section, mine rescue teams shall be considered available where teams are capable of presenting themselves at the mine site(s) within a reasonable time after notification of an occurrence which might require their services. Rescue team members will be considered available even though performing regular work duties or while in an off-duty capacity.

(a) In the event of a fire, explosion, or recovery operations in or about any mine, the director is hereby authorized to assign any mine rescue team to said mine to protect and preserve life and property. The director may also assign mine rescue and recovery work to inspectors, instructors or other qualified employees of the office as he or she deems necessary.

(b) The agency's mine rescue team members shall be considered "duly qualified emergency service worker" as defined in WV Code § 15-5-11.

(c) Each mine rescue team shall consist of five members and one alternate, who are fully qualified, trained and equipped for providing emergency mine rescue service. Each mine rescue team shall be trained by a state certified mine rescue instructor.

(d) Each member of a mine rescue team must have been employed in an underground mine for a minimum of one year. For the purpose of mine rescue work only, miners who are employed on the surface but work regularly underground meet the experience requirement. The underground experience requirement is waived for those members of a mine rescue team on the effective date of this statute.

(e) An applicant for initial agency mine rescue training shall pass, on at least an annual basis, a physical examination by a licensed physician certifying his or her fitness to perform mine rescue work. A record that such examination was taken, together with pertinent data relating thereto, shall be kept on file by the director. A team member requiring corrective eyeglasses will not be disqualified provided the eyeglasses can be worn securely within an approved facepiece.

In determining whether a miner an applicant is physically capable of performing mine rescue duties, the physician shall take the following conditions into consideration:

(1) Seizure disorder;

(2) Perforated eardrum;

(3) Hearing loss without a hearing aid greater than 40 decibels at 400, 1000, and 2000 Hz;

(4) Repeated blood pressure (controlled or uncontrolled by medication) reading which exceeds 160 systolic, or 100 diastolic, or which is less than 105 systolic, or 60 diastolic;

(5) Distant visual acuity (without glasses) less than 20/50 Snellen scale in one eye, and 20/70 in the other;

(6) Heart disease;

(7) Hernia;

(8) Absence of a limb or hand; or

(9) Any other condition which the examining physician determines is relevant to the question of whether the miner is fit for rescue team service.

(f) Upon completion of the initial training, all agency's mine rescue team members shall receive at least ninety-six (96) hours of refresher training annually.

(g) Each member of a mine rescue team shall be examined annually by a physician who shall certify that each person is physically fit to perform mine rescue and recovery work for prolonged periods under strenuous conditions.

### **§36-44-3. Physical Requirements.**

3.1 (a) Any person making application to participate in initial agency mine rescue training shall have had an examination by a physician, who shall certify that such applicant is physically fit to perform mine rescue and recovery work while wearing a self-contained oxygen breathing apparatus. The physical examination shall be completed within thirty (30) days prior to scheduled initial training.

(b) A physician shall fill out a form prescribed by the Director, and such form shall be presented to the Mine Rescue Training Instructor five (5) days prior to scheduled initial training.

### **§36-44-4. Agency Mine Rescue Team Members Compensation; Worker's Compensation.**

4.1 (a) Agency mine rescue team members are to be paid a minimum of \$250 per month, with the rate thereafter to be determined annually by the Director.

(b) When engaged in rescue work required by an explosion, fire or other emergency at a mine, all members of the agency's mine rescue teams assigned to rescue operations shall, during the period of their rescue work, be employees of the operator of the mine where the emergency exists, and shall be compensated by the operator at the rate established in the area for such work. In no case shall this rate be less than the prevailing wage rate in the industry for the most skilled class of inside mine labor and paid according to the following criteria:

Time and half – when on standby at hotel/home

Double time - when available on the surface

Triple time – when under apparatus underground

The Director will invoice the operator and ensure proper distribution to the individual agency mine rescue team members.

(c) During the period of their emergency employment, members of mine rescue teams shall be protected by the workers' compensation subscription of such emergency employer.

**TITLE 36  
LEGISLATIVE RULES  
BOARD OF COAL MINE HEALTH AND SAFETY**

**SERIES 25  
MINE RESCUE REQUIREMENTS FOR THE OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING**

**§36-44-1. General**

1.1 Scope. This rule governs mine rescue requirements for the Office of Miners' Health, Safety and Training. This rule in no way should be construed as relieving mine operators from their requirement to either have their own mine rescue team or contract coverage.

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APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: MINE RESCUE REQUIREMENTS FOR THE OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING

Type of Rule:  Legislative  Interpretive  Procedural

Agency: WV Board of Coal Mine Health and Safety

Address: 1615 Washington Street East  
Charleston, WV 25311

Phone Number: 3049572306 Email: jwatts@suddenlink.net

**Fiscal Note Summary**

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

It is unknown at this time what the final cost will be. There will be additional training required from the State Agencies. We expect a review by the State Agency during the comment period

**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)
<b>1. Estimated Total Cost</b>			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
<b>2. Estimated Total Revenues</b>			

Rule Title: \_\_\_\_\_

Rule Title: MINE RESCUE REQUIREMENTS FOR THE OFFICE OF MINERS' HEALTH,

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

**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.

Date: 04/22/2010

Signature of Agency Head or Authorized Representative

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