

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #5

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2006 JUN 13 P 3:40

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

CITE AUTHORITY: 22A-6-1

RULE TYPE: PROCEDURAL _____ INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE Yes

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

West Virginia Code Sec. 22-6-4

AMENDMENT TO AN EXISTING RULE: YES XX NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 44


TITLE OF RULE BEING AMENDED: Mine Rescue Requirement for the Office of Miners'
Health, Safety and Training

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE

EFFECTIVE DATE OF THIS RULE IS July 13, 2006


Authorized Signature

Title 36
Legislative Rule
BOARD OF COAL MINE HEALTH AND SAFETY

FILED

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Series 44

Mine Rescue Requirements for the Office of Miners' Health Safety and Training

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§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 -- W. Va. Code 22-6-4

1.3 Filing Date -- May 5, 2006

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 North area of the State and one located in the South 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 cellphones, 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 W.Va. 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.

(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.

§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.



WEST VIRGINIA BOARD OF COAL MINE HEALTH AND SAFETY

1615 Washington Street East • Charleston, West Virginia 25311-2126 • Telephone 304-558-1425 • Fax 304-558-6091

Title 36, Series 44 – Mine Rescue Requirements for the Office of Miners' Health Safety and Training.

A public hearing was held at 1615 Washington Street, E., Charleston on June 6, 2006 on the Proposed Rule on Mine Rescue Requirement for the Office of Miners' Health, Safety and Training.

Written comments were received from the Acting Director, OMHS&T on the Proposed Regulation. (Copy attached hereto.)

The Board of Coal Mine Health and Safety concurs with the Acting Director and the following changes were made:

§36-44-2(b) – Establish one mine rescue team per OMHS&T regional office rather than 2 teams as originally stated.

REASON: Current federal legislation calls for companies with more than 36 employees to have a mine rescue team. These rules must not replace the requirement for the operator to have mine rescue teams or coverage, at a minimum.

2.1(d) - ...”any other equipment deemed necessary by the Director”.

REASON: This language added for possible future necessary equipment as technology changes.

2.2(b) – Eliminated criteria that travel time cannot exceed 2 hours.

REASON: In some cases, some mines in the Fairmont OMHS&T regional office may exceed by 15-20 minutes.

2.2(f) – Inserted word ...”agency’s” mine rescue team members shall...

REASON: This criterion currently relates to the OMHS&T rescue teams.

ADDITIONALLY, NEW SECTIONS 3 & 4 WERE ADDED:

Section 3 – Requiring any person who applies to participate in agency mine rescue training shall be physically fit and present a doctor's form so stating.

REASON: This language is similar to §48-4-2, criteria for the initial mine rescue team member training program for prospective mine rescue team members in West Virginia.

Section 4 – Agency mine rescue team members are to receive \$250 monthly; director to evaluate annually.

REASON: The current rate of \$32 monthly for agency mine rescue team members is neither sufficient, nor comparable compensation.

44-4(b) Compensation – This section delineates the compensation for agency mine rescue team members. The director has the authority to invoice the operator and distribute compensation to team members.

LHolst:ms
June 13, 2006

Comments to the WV Board of Coal Mine Health and Safety regarding proposed legislative rule Title 36, Series 44 on Mine rescue requirements for the Office of Miners Health Safety and Training.

Submitted by: Jim Dean
Acting Director
West Virginia Office of Miners Health Safety and Training
June 6, 2006.

First, let me thank the Board for their decisive action in order to address the area of mine rescue response the day following the Sago public hearings. I respectfully submit the following information and comments for the Board's consideration on the above referenced rules.

For the record, West Virginia code §22A-1-33 and §22A-1-34. Section **22A-1-33** states the following:

The director is hereby authorized to purchase, equip and operate for the use of said office such mine rescue stations and equipment as he or she may deem necessary.

Section **22A-1-34** states the following:

The director is hereby authorized to have trained and employed at the rescue stations, operated by the office within the state, such rescue crews as he or she may deem necessary. Each member of a rescue crew shall devote four hours each month for training purposes and shall be available at all times to assist in rescue work at explosions and mine fires. Regular members shall receive for such services the sum of thirty-two dollars per month, and captains shall receive thirty-five dollars per month, payable on requisition approved by the director. The director may remove any member of a rescue crew at any time

I would also like to enter into the record the Mine Rescue Improvement Plan dated April 7, 2006 delivered to Governor Manchin on April 19, 2006 in Wheeling, WV. Copies of this same plan were also shared with the Board of Coal Mine Health Safety on May 5, 2006 prior to the filing of the proposed Legislative rule Title 36, Series 44.

I'd like to make the following general statements that should be addressed in the final rule and believe that the Board is in agreement with the majority of them:

- 1) The proposed rule in no way should be construed as relieving companies from their requirement to either have their own mine rescue team or contract coverage. Coverage to mines provided by the state of Kentucky actually reduced the number of mine rescue teams in their state ... this must not happen in West Virginia.
- 2) Agency Mine rescue team members should be compensated at a rate of more than thirty-two dollars per month as indicated in §22A-1-34. Based upon input I have received, contract mine rescue team members are currently being paid \$250 per

month for their service as a mine rescue team member. I recommend that wording to the effect of "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." be added.

- 3) A "Good Samaritan" law should be included for the agency and its employees participating in mine rescue activities.
- 4) Language should be added similar to **§48-4-2. Criteria For The Initial Mine Rescue Team Member Training Program For Prospective Mine Rescue Team Members In West Virginia**, which reads as follows:

2.1. Physical Requirements.

a. Any person making application to participate in initial 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.

- 5) The state should be able to recover all costs of mine rescue teams working at an emergency or during recovery work by the Director billing the operator for such cost of material and personnel. Personnel should be paid according to the following:

Time and half – when on standby at hotel/home

Double time – when available on the surface

Triple time – when under apparatus underground

Based on an informal survey of mine rescue teams this is current practice.

Possible wording (with inclusion of pay rates) may be obtained from **§22A-1-35(j)** which reads as follows:

When engaged in rescue work required by an explosion, fire or other emergency at a mine, all members of 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. During the period of their emergency employment, members of mine rescue teams shall be protected by the workers' compensation subscription of such emergency employer.

I would also like to address some of the language in the proposed rules as currently written. My comments are as follows:

2.1b I believe that the number of OMHS&I teams should be two teams per mine rescue station rather than the two teams per region currently called for. Given that current federal legislation calls for companies with more than 36 employees to have a mine rescue team, a brief analysis of WV mines was conducted. Based on

February 2006 tonnage reports, which indicates active mines, the following was noted:

Reported employees	Number of Underground Permits
1-36	51
37-50	24
51-75	29
76+	30

This yields a total of 134 underground mines showing activity in the month of February. Based on information from Mike Rutledge with OMHS&T there are a total of 27 mine rescue teams in the state, 10 of which are contract teams. Upon doing the math if the requirement stays at 36 employees, this could require as many as 65 new mine rescue teams be created within the state. Other scenarios and conditions may be developed based on this information, but as stated earlier, these rules must not replace the requirement for the operator to have mine rescue teams or at a minimum coverage.

I also believe that the language ... "and equipped ..." in 2.1 b should be stricken.

2.1 d should be modified to read "to provide the necessary fully equipped mine rescue vehicles for each ..." "... computers with mine mapping software (CAD) and modems; and any other equipment deemed necessary by the Director.

2.2b Eliminate Some mines in Fairmont region may exceed by 15-20 minutes. Based on the current language it would require the creation of an additional regional office and another mine rescue team for two to three mines being outside the 2 hr limit. We are not providing coverage, but are serving as auxiliary support.

2.2f Which reads as "Upon completion of the initial training, all mine rescue team members shall receive at least 96 hours of refresher training annually." I recommend that the word "agency's" be inserted to read as "all agency's mine rescue team members shall...". I further recommend that the Board and Director work jointly to modify the similar requirement for company teams to be the same required 96 hours of refresher training annually in section 22A-1-35(i).

Given the above information I, as Acting Director of the Office of Miners Health Safety and Training, do not have a problem in agreeing with the Board's proposed rules. I am also willing to discuss particular language as the Board sees fit at a later meeting of the Board. I believe that the above listed additions and modifications will strengthen the rules and still provide the Director the statutory discretion as envisioned in §22A-1-33 and §22A-1-34 of the West Virginia code. Thank you for your time and attention.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 36 Series 44
 Type of Rule: Legislative Interpretive Procedural
 Agency: WV BOARD OF COAL MINE HEALTH AND SAFETY
 Address: 1615 WASHINGTON STREET EAST
CHARLESTON WV 25311-2126
 Phone Number: 304 558-1425 X30 Email: kdickens@mines.state.wv.us

Fiscal Note Summary

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

Depending on the funding source, minimal if from coal severance tax.

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 -	1.8 - 2 million	1.2 million annually
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	-0-	1.8 - 2 million	1.2 million annually

Rule Title: Title 36 Series 44

Rule Title:

Title 36 Series 44

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

Costs associated with upgrading Office of Miners' Health, Safety and Training mine rescue capabilities.
Includes salaries, benefits, equipment, vehicles, computers and all other related expenses.

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.

N/A

Date:

June 13, 2006

Signature of Agency Head or Authorized Representative

Kenneth Dickens