



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

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Office of West Virginia  
Secretary Of State

**NOTICE OF PUBLIC COMMENT PERIOD**

AGENCY: Coal Mine Health And Safety TITLE-SERIES: 36-44

RULE TYPE: Legislative Exempt Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Rule Governing Mine Rescue Requirements for the Office of Miners' Health, Safety and Training

CITE STATUTORY AUTHORITY: W. Va. Code §§22A-6-4 and 22A-6-5

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 06/17/2021 5:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Frank Foster

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PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

This rule requires the Office of Miners Health Safety, and Training to establish and maintain at least two mine rescue teams within the agency. Other requirements in the rule include physical requirements for mine rescue team members and compensation for the said team members.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

Pursuant to the regulatory review and reform initiatives established in W. Va. Code §29A-3-20 (2016) and Executive Order No. 3-18, this proposed rule modifies and updates 36 C.S.R. 44 to cross-reference the correct authorizing portions of the West Virginia Code and corrects typographical errors including errors in paragraph numbering.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

This proposed legislative-exempt rule is not anticipated to impact the revenues of state government.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

This proposed legislative-exempt rule is not anticipated to impact special revenue accounts.

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

This proposed legislative-exempt rule is not anticipated to economically impact the State or its residents.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0.0	0.0	0.0
Personal Services	0.0	0.0	0.0
Current Expenses	0.0	0.0	0.0
Repairs and Alterations	0.0	0.0	0.0
Assets	0.0	0.0	0.0
Other	0.0	0.0	0.0
<b>2. Estimated Total Revenues</b>	0.0	0.0	0.0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

N/A

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.**

Yes

Jack M Rife -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 36  
LEGISLATIVE EXEMPT RULE  
BOARD OF COAL MINE HEALTH AND SAFETY

SERIES 25 44  
RULE GOVERNING 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. -- W. Va. Code ~~§ 22A-6-4~~ W. Va. Code §§22A-6-4 and 22A-6-5.

1.3. Filing Date. -- ~~December 1, 2010~~ \_\_\_\_\_.

1.4. Effective Date. -- ~~January 1, 2011~~ \_\_\_\_\_.

**§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:

2.1.1. (a) Establish and maintain two (2) mine rescue stations within the ~~OMHS&T~~ Office of Miners' Health, Safety and Training; one (1) located in the Northern area of the state, and one located in the Southern area of the state, at locations determined by the Director.

2.1.2. (b) To establish one (1) fully trained mine rescue team per each ~~OMHS&T's~~ Office of Miners' Health, Safety and Training regional office.

2.1.3. (c) The members assigned to the mine rescue and recovery work may be inspectors, instructors or other qualified employees of the office as the ~~the~~ Director deems necessary. The ~~the~~ Director shall employ additional employees as he/she deems necessary to fulfill the requirement of this ~~s~~Section.

2.1.4. (d) To provide the necessary fully equipped mine rescue vehicles for each ~~OMHS&T~~ Office of Miners' Health, Safety and Training 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.

2.1.5. (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 ~~s~~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.

2.2.1. ~~(a)~~ In the event of a fire, explosion, or recovery operations in or about any mine, the ~~d~~Director is hereby authorized to assign any mine rescue team to said mine to protect and preserve life and property. The ~~d~~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.

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

2.2.3. ~~(c)~~ Each mine rescue team shall consist of five (5) members and one (1) alternate, who are fully qualified, trained and equipped for providing emergency mine rescue services. Each mine rescue team shall be trained by a state certified mine rescue instructor.

2.2.4. ~~(d)~~ Each member of a mine rescue team must have been employed in an underground mine for a minimum of one (1) 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~~ rule.

2.2.5. ~~(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 ~~d~~Director. A team member requiring corrective eyeglasses will not be disqualified provided the eyeglasses can be worn securely within an approved facepiece.

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

2.2.6.a. ~~(1)~~ Seizure disorder;

2.2.6.b. ~~(2)~~ Perforated eardrum;

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

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

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

2.2.6.f. ~~(6)~~ Heart disease;

2.2.6.g. ~~(7)~~ Hernia;

2.2.6.h. ~~(8)~~ Absence of a limb or hand; or

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

2.2.7. ~~(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.

2.2.8. ~~(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.

3.2. ~~(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~~ \$300 per month, with the rate thereafter to be determined annually by the Director.

4.2. ~~(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:

4.2.1. Time and half – when on standby at hotel/home.

4.2.2. Double time – when available on the surface.

4.2.3. Triple time – when under apparatus underground.

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

4.4. ~~(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.