

NOTICE OF EMERGENCY RULE

RULE TITLE: Standards for Certification of Underground
Belt Examiners for Underground Mines

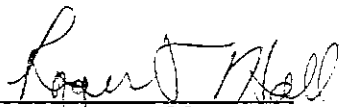
The attached rule is filed as an Emergency Rule. The facts and circumstances constituting the emergency are as follows:

STATEMENT OF FACTS AND CIRCUMSTANCES
CONSTITUTING AN EMERGENCY

The West Virginia Legislature, during the 1986 regular session passed House Bill 2183 on March 8, 1986. The bill became effective upon passage. Contained within the bill at Chapter 22A, Article 2, Section 39(e) is a requirement that all belt conveyors be inspected by a certified belt examiner, mine foreman-fireboss, or assistant mine foreman-fireboss. The bill was also amended at Chapter 22A, Article 2, Section 39(i) which authorized the West Virginia Board of Miner Training, Education and Certification to promulgate regulations establishing criteria for training, examination and certification of belt examiners for underground miners.

Prior to passage of this bill, only mine foremen-firebosses and assistant mine foremen-firebosses were authorized to carry out belt examinations. The necessity for the amended legislation stemmed from the fact that these authorized personnel had numerous other duties throughout the mine, and, as a result, thorough and regular belt examinations were not always possible. The training and certification of additional personnel would obviously assure that such inspections could be made on a routine basis with greater care and scrutiny. In view of the potential hazards associated with belt conveyance of personnel and materials, it is important that these additional examiners be certified and carrying out their duties as quickly as possible to assure the safety and welfare of miners working underground.

In order to meet the statutory mandate of developing standards and criteria for certification and to insure additional safety for miners, emergency promulgation of these regulations is necessary.



Roger T. Hall

FILED
1986 SEP -3 PM 2:45
OFFICE OF THE SECRETARY OF STATE

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Standards for Certification of Underground Belt Examiners
for Underground Mines

Type of Rule: X Legislative Interpretive Procedural

Agency WV Department of Energy Address 1615 Washington Street, E.
Charleston, WV 25311

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ 00.00	\$ 00.00	\$ 00.00	\$ 00.00	\$ 00.00
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates.
Additional duties will be carried out by existing staff

3. Objectives of these rules:
Certification of underground belt examiners

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

None

C. Economic Impact on Citizens/Public at Large.

None

Date 9-3-86

Signature of Agency Head or Authorized Representative

Mark A. Scott

LEGISLATIVE RULES

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

DEPARTMENT OF ENERGY

CHAPTER 22-4
SERIES # 21

FILED
1986 SEP -3 PM 2:45
SECRETARY OF STATE

SUBJECT: RULES AND REGULATIONS GOVERNING THE STANDARDS FOR CERTIFICATION OF UNDERGROUND BELT EXAMINERS FOR UNDERGROUND COAL MINES

Section 1. General

1.01 Scope - These rules and regulations pertain to the certification of belt examiners for underground coal mines pursuant to West Virginia Code 22A-2-39.

1.02 Authority - These rules and regulations are issued under authority of West Virginia Code, Chapter 22, Article 9, Section 5, 6, as amended, and in accordance with the provisions of Chapter 29-A, Article 3 of the West Virginia Code.

1.03 Effective Date - These rules and regulations meet the requirements of Chapter 29-A, Code of West Virginia, as amended, and become effective immediately upon filing.

1.04 Filing Date - These rules and regulations were filed in the Office of the Secretary of State on _____, _____, 1986.

Section 2. Definitions

2.01 Certified Belt Examiner - A certified belt examiner shall mean any person who meets the criteria outlined in Section 3 of these rules and regulations and is issued a belt examiner certification from the West Virginia Department of Energy.

2.02 Practical Underground Mining Experience - Practical underground mining experience shall mean experience obtained while performing normal duties as an underground miner.

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

Section 3. Criteria for Belt Examiners Certification

3.01 Prior to any person being issued a belt examiners certification, such applicant must: (1) Possess a miner's certification (See West Virginia Administrative Regulation, Series 8, Section 2.9, "Guidelines for Issuing Underground Miner's Certificate"); (2) have at least two calendar years of practical underground mining experience; and, (3) successfully completes the certification examination contained in Section 4.

NOTE: The above experience requirement is intended to ensure that such individual possesses a basic and general knowledge of the mine environment and related hazards.

Section 4. Examination Components

4.01 Examinations for belt examiner certification shall consist of the following two parts:

I. Written

- A. Belt conveyor legal requirements
- B. Roof control practices
- C. Mine ventilation
- D. Mine gases and instruments
- E. Fire Hazards
- F. Inspection and reporting procedures

II. Practical

- A. Use and care of flame safety lamp
- B. Anemometer
- C. Methane detector

Section 5. Application for Certification and Testing Procedures

5.01 Any person desiring to become certified as a belt examiner must complete an application for certification and submit the same to the West Virginia Department of Energy office. Such application, if possible, shall be submitted at least ten days in advance of taking the examination.

5.02 A score of 75 percent on the written part and passage of the practical part is required for successful passage of the exam. The practical portion of the exam and subparts thereof will be scored on a pass/fail basis.

5.03 Upon taking the examination, any person who fails to achieve a score of 75 percent on the written part or fails the practical part shall be required to retake the entire examination in order to receive a certificate.

5.04 The Director of the Department of Energy, Mines and Minerals Division, in conjunction with the Board of Miner Training, Education and Certification, should develop the application form and guidelines for processing applications and administering examinations.



ARCH A. MOORE, JR.
GOVERNOR

STATE OF WEST VIRGINIA
DEPARTMENT OF ENERGY
1615 WASHINGTON STREET, EAST
CHARLESTON, WEST VIRGINIA 25311
TELEPHONE 343-3500

KENNETH R. FAERBER
COMMISSIONER

September 2, 1986

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

Dear Secretary Hechler:

Enclosed please find a copy of an emergency legislative rule promulgated by the Board of Miner Training, Education and Certification in accordance with Chapter 29-A-3 of the Code of West Virginia and under the authority of West Virginia Code, Chapter 22, Article 9, Sections 5 and 6, and Chapter 22A, Article 2, Section 39, as amended. Also enclosed is a statement of facts and circumstances constituting the emergency.

Please be advised that fifteen (15) copies of the rule and statement have been forwarded to the Legislative Rule-Making Review Committee.

I request that you review and accept this rule and file the same in your office making it effective upon filing.

A public comment period and public hearing will be scheduled within sixty (60) days.

Your assistance and cooperation in this matter is very much appreciated.

Sincerely,

Roger T. Hall

RTH/ba

Enclosures

PUBLIC NOTICE MAILING LIST

1. Clarksburg Publishing Company
 Clarksburg Exponent and Telegram
 324-326 Hewes Avenue
 Clarksburg, West Virginia 26301

2. Inter-Mountain
 Post Office Box 1339
 Elkins, West Virginia 26241

3. Herald Dispatch
 946 Fifth Avenue
 Huntington, West Virginia 25720

4. Beckley Newspapers, Inc.
 Raleigh Register and Beckley Post-Herald
 Post Office Drawer P or R
 Beckley, West Virginia 25801

5. The Dominion Post
 Greer Building
 Morgantown, West Virginia 26505

6. The Ogden Newspapers, Inc.
 Wheeling News Register and Intelligencer
 1500 Main Street
 Wheeling, West Virginia 26003

7. The Charleston Gazette
 Post Office Box 2993
 Charleston, West Virginia 25330

8. Independent Oil & Gas Association
 22 Capitol Street
 Charleston, West Virginia 25301

9. West Virginia Oil and Natural Gas Association
 Post Office Box 323F
 Charleston, West Virginia 25332

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

BARBARA STARCHER
Deputy Secretary of State

RICHARD S. STEPHENSON
Deputy Secretary of State

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STATE OF WEST VIRGINIA
SECRETARY OF STATE

Charleston 25305

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Chief of Staff

RICH O. HARTMAN
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DONALD R. WILKES
Director, Corporations

VIRGINIA SKEEN
Special Assistant

(Plus all the volunteer
help we can get)

October 15, 1986

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Department of Energy

RULE: Rules and Regulations Governing the Standards for
Certification of Underground Belt Examiners for
Underground Coal Mines.

DATE FILED AS AN EMERGENCY RULE: September 3, 1986

DECISION NO. 19-86

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.

A handwritten signature in cursive script that reads "Ken Hechler".

KEN HECHLER
Secretary of State

SECRETARY OF STATE
1986 OCT 15 PM 2 48
FILED

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

BARBARA STARCHER
Deputy Secretary of State

RICHARD S. STEPHENSON
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DECISION

Emergency Rule Decision
(ERD 19-86)

AGENCY: Department of Energy
RULE: Rules and Regulations Governing the Standards for
Certification of Underground Belt Examiners for
Underground Coal Mines.

DATE FILED AS AN EMERGENCY RULE: September 3, 1986

- par. 1 The Department of Energy (DOE) has filed as emergency rule as a new rule, above titled, establishing the standards for certification as a belt examiner.
- 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 of its statutory authority in promulgating the emergency rule; or 3) can show that 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 DOE has filed this emergency rule with supporting documents with the Secretary of State on September 3, 1986.
- par. 7 It is the determination of the Secretary of State that the Department of Energy has complied with the procedural requirements of WV Code §29A-3-15.
- par. 8 (B) Statutory Authority -- WV Code §22-1-15 reads in part:
§22-1-15. Commissioner's authority to promulgate rules and regulations.
The commissioner shall have the power and authority to propose or promulgate rules and regulations to organize the department and to carry out and implement the provisions of this chapter and chapter twenty-two-a [§22A-1-1 et seq.] of this code.
- par. 9 WV Code 22A-2-40(e) and (i) reads:
(e) All belt conveyors shall be inspected for frozen rollers, rock falls, and fires, following the last production shift each week, also before holidays, vacation periods, and each production shift, with records kept of daily inspection.
(i) After supplies have been transported on belt conveyors, such belts shall be examined for unsafe conditions prior to the transportation of miners.
- par. 10 It is the determination of the Secretary of State that the Department of Energy has not exceeded its statutory authority by adopting this rule.
- par. 11 (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. 12 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 Department of Energy claims this rule is for the immediate preservation of the public . . . health, safety

par. 14 The DOE states the following:

The West Virginia Legislature, during the 1986 regular session passed House Bill 2183 on March 8, 1986. The bill became effective upon passage. Contained within the bill at Chapter 22A, Article 2, Section 39(e) is a requirement that all belt conveyors be inspected by a certified belt examiner, mine foreman-fireboss, or assistant mine foreman-fireboss. The bill was also amended at Chapter 22A, Article 2, Section 39(i) which authorized the West Virginia Board of Miner Training, Education and Certification to promulgate regulations establishing criteria for training, examination and certification of belt examiners for underground miners.

Prior to passage of this bill, only mine foremen-firebosses and assistant mine foremen-firebosses were authorized to carry out belt examinations. The necessity for the amended legislation stemmed from the fact that these authorized personnel had numerous other duties throughout the mine, and, as a result, thorough and regular belt examinations were not always possible. The training and certification of additional personnel would obviously assure that such inspections could be made on a routine basis with greater care and scrutiny. In view of the potential hazards associated with belt conveyance of personnel and materials, it is important that these additional examiners be certified and carrying out their duties as quickly as possible to assure the safety and welfare of miners working underground.

In order to meet the statutory mandate of developing standards and criteria for certification and to insure additional safety for miners, emergency promulgation of these regulations is necessary.

par. 15 Mine safety is of major importance to the state and a major responsibility of the DOE. As previously stated in past ERD's, this office will apply a lesser degree of standards to the desire to adopt an emergency rule to prevent injury or life threatening conditions.

par. 16 The Secretary of State determines that the Department of Energy has demonstrated the need to make effective this proposal.

par. 17 It is the decision of the Secretary of State that this proposal by the Department of Energy is in procedural compliance with WV Code 29A-3-15; does not exceed the statutory authority of the Department of Energy; and that the facts and circumstances presented constitute an emergency. Therefore, the Secretary of State decides that this emergency rule should be approved.

par. 18

This decision shall be cited as Emergency Rule Decision 19-86 or ERD 19-86 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Department of Energy, the Attorney General and the Legislative Rule Making Review Committee.

KEN HECHLER
SECRETARY OF STATE

Entered _____

KEN HECHLER
Secretary of State

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Deputy Secretary of State

BARBARA STARCHER
Deputy Secretary of State

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help we can get)

March 4, 1987

NOTICE OF THE EXPIRATION OF AN EMERGENCY RULE

AGENCY: Department of Energy

RULE TITLE: Standards for Certification of Underground Belt Examiners.

DATE FILED AS AN EMERGENCY RULE: September 3, 1987

THE ABOVE EMERGENCY RULE HAS EXPIRED DUE TO THE AGENCY'S FAILURE TO FILE THEIR PROPOSED RULE, MADE EFFECTIVE AS AN EMERGENCY RULE, WITH THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE WITHIN THE TIME PERIOD ESTABLISHED BY WV CODE 29A-3-15(a)(3). THIS EMERGENCY RULE WAS EFFECTIVE FROM SEPTEMBER 3, 1986 UNTIL MARCH 2, 1987 INCLUSIVE.

A handwritten signature in black ink, appearing to read "Rich O. Hartman".

Rich O. Hartman, Director
Administrative Law Division

SECRETARY OF STATE

1987 MAR -4 AM 11:50

FILED