

WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION

Form #5

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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

Kenneth Dickert
Authorized Signature

TITLE 36
LEGISLATIVE RULE
BOARD OF COAL MINE HEALTH AND SAFETY

SERIES 44
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 22-6-4.

1.3. Filing Date. -- June 13, 2006.

1.4. Effective Date. -- July 13, 2006.

§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&I; 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&I'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&I 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.

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(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.