



# West Virginia Coal Association

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MSHA/OSRV

## **Comments of the West Virginia Coal Association to the Emergency Temporary Standard (ETS) for Mine Evacuation published in the Federal Register on March 9, 2006; Public Hearing May 9, 2006, Charleston WV.**

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The West Virginia Coal Association is a trade association comprised of coal producing companies that account for approximately 75% of the state's coal production. West Virginia's coal industry accounts for nearly 110 million tons of annual coal production from underground mining operations, thus, continues as the leading underground coal producing state in the country. Our membership also includes land companies, equipment manufacturers, mine supply and service companies.

We appreciate the opportunity to participate in this rulemaking and to comment on MSHA's **Emergency Temporary Standard (ETS) for Mine Evacuation** which was published in the Federal Register on March 9, 2006.

We remain committed to operating the safest mines in the country and the world and offer the following comments to enhance the overall effect of MSHA's "ETS".

Our recommendations are intended to strengthen these requirements while at the same time, safeguard against unintended consequences, unrealistic performance outcomes or unrealized expectations that may result from the "ETS" subject to today's hearing.

Initially, we point to the comments presented by the National Mining Association at the public hearing held in Arlington, Va., on April 28 and would observe that many of our member companies and their safety professionals contributed to NMA's comments to the "ETS". For the record, we embrace those comments and would urge your consideration of the same.

We also note that today's hearing comes nearly four (4) months following the enactment of WV SB 247 by the WV Legislature addressing the same topics and requirements contained in MSHA'S "ETS".

A special joint labor-management work group comprised of mine health and safety professionals was also convened to assist in the development of administrative rules to implement the specific requirements of SB 247. These rules were initially filed on February 1 and revised on February 28, 2006.

AB46-HEAR-4H-SUBMISSION

The "amended" Emergency Rule filed on February 28<sup>th</sup>, contained a number of changes to the February 1<sup>st</sup> version based on a careful analysis and evaluation by the special Mine Health & Safety Task Force of procedures, protocols and requirements for mine emergency preparedness, mine evacuation needs including the proper sequencing of escaping from a mine and the placement of additional breathing apparatuses and lifelines.

We respectfully request MSHA to examine these requirements (attached) and to consider modifications to its "ETS" consistent with WV requirements or to develop a procedure within this rulemaking for MSHA to approve a state plan for adequately addressing these topics. For instance, MSHA approves "State Plans" for Miner Certifications. Such plans must meet contain criteria and standards consistent with those found in federal law and must provide the same level of safety or protections for miners. We recommend the same process be adopted for state approved plans for mine evacuation.

Regardless of the approach MSHA's elects, it is inescapable that MSHA's current "ETS" and WV's Emergency rules address the same topics but do so quite remarkably in a different fashion. Unfortunately, this leaves coal operations in West Virginia with two separate compliance standards.

To avoid compliance and enforcement complexities, the state and federal mine safety offices should join together in this important endeavor to provide uniformity within their rules.

We would also call your attention to the WV Mine Safety Technology Task Force and its obligation to issue a report by June 1, 2006 outlining its specific findings and recommendations with respect to similar requirements. The "Task Force", like the aforementioned joint labor-management, is comprised of mine health and safety professionals and among other responsibilities was created to study issues related to the implementation, compliance and enforcement of the safety requirements contained within the state's emergency rule.

As in industry, we remain committed to operating the safest mines in the country and world and pledge our full support towards achieving this shared goal.

Since January, WVCA has drawn upon its collective mine health and safety, technical and operational expertise to work diligently with state and federal regulators, miners and other concerned stakeholders, to identify and implement health and safety measures that will affect real change and safety improvements in the mines.

- West Virginia mine operators have provided increased numbers of SCSRs for miners. There are now additional supplies of strategically placed SCSRs per each miner in all West Virginia mines.

- West Virginia mines have increased numbers of lifelines and fire protection systems available.
- Mine operators have stepped up their mine emergency training programs. All mine emergency and preparedness drills and procedures have been reviewed and revised. Operators are providing increased training and simulation drills to ensure that miners and supervisors are fully prepared in case of emergency.
- WVCA and its members are working with the West Virginia Office of Homeland Security and Emergency Response and all state mine safety agencies on developing the very best immediate accident notification system to ensure timely rescue in the event of an emergency.
- WVCA is evaluating the appropriateness and effectiveness of safety shelters and safety chambers in underground mines.
- WVCA advocated for the creation of, and is participating in, the West Virginia Mine Safety Technology Task Force. The task force is charged with evaluating and proposing for industry use improvements and advancements in mine safety and health, miner tracking systems and new mine safety communications technology.
- Along with the entire international mining community, WVCA is working to identify and implement the very best state-of-the-art communications technology for use in underground mines.

We appreciate the opportunity to comment on these rules.

Thank You.

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

Form #8

Do Not Mark In This Box  
Filing Date

FILED

2006 FEB 27 P 4: 38

WEST VIRGINIA  
SECRETARY OF STATE  
Effective Date

**NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE**

AGENCY: WV Office of Miners' Health Safety & Training TITLE NUMBER: 56

DATE EMERGENCY RULE WAS ORIGINALLY FILED: February 1, 2006

FIRST EMERGENCY AMENDMENT TO AN EXISTING RULE: YES  NO

SECOND EMERGENCY AMENDMENT TO AN EXISTING RULE: YES  NO

DATE OF FIRST EMERGENCY AMENDMENT: \_\_\_\_\_

SERIES NUMBER OF RULE: 4

TITLE OF RULE: Rules Governing Protective Clothing and Equipment

THE ATTACHED IS AN EMERGENCY AMENDMENT TO AN EXISTING EMERGENCY RULE. THIS EMERGENCY AMENDMENT BECOMES EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY AMENDMENT ARE AS FOLLOWS:

This amended rule provides for the following: the establishment of a Mine Safety Technology Task Force to provide technical assistance with the commercial availability and operational capability of rescue chambers, wireless communication and wireless tracking devices.

This rule determines the placement intervals of additional SCSRs to be used as a means to exit the mine. Rescue chambers are permitted that will provide 24 hours of breathable air.

Also, mining companies are required to submit a plan and compliance schedule for each of the requirements in the rule.

Use additional sheets if necessary

  
Authorized Signature

FILED

2006 FEB 27 P 4:38

GEORGE EAST VIRGINIA  
SECRETARY OF STATE

**EMERGENCY**

**WEST VIRGINIA LEGISLATIVE RULE**

**OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING**

**TITLE 56**

**SERIES 4**

**EMERGENCY RULES GOVERNING PROTECTIVE CLOTHING AND EQUIPMENT**

**§56-4-1. General.**

1.1. Scope. -- These emergency rules pertain to the implementation of provisions of W. Va. Code § 22A-2-55, relating to the regulation of protective clothing and equipment worn by persons underground by the Office of Miners' Health, Safety and Training.

1.2. Authority. -- W. Va. Code § 22A-2-55.

1.3. Filing Date. -- February \_\_, 2006.

1.4. Effective Date. -- \_\_\_\_\_, 2006.

**§56-4-2. Preamble.**

2.1. Purpose - The primary goal of section fifty-five, article two, chapter twenty-two-a of the Code is to protect the health and safety of this State's coal miners by requiring minimum standards for the protective clothing and equipment worn by each underground miner. The purpose of these rules is to implement the mandate of section fifty-five, article two, chapter twenty-two-a of the Code by requiring coal mine operators to provide each underground miner

with certain protective equipment and by detailing the requirements for such protective equipment. In implementing such mandate, it is recognized that different types of protective equipment may be developed to satisfy the minimum requirements for protective equipment for each mine, depending upon the number of employees of the particular mine, the location of the particular mine, the physical features of the particular mine, and technological advances.

2.1.1. Exiting a mine is the primary escape procedure to be used by miners in the event of an emergency underground. Self-contained self-rescue devices ("SCSRs") are intended primarily to provide miners with breathable air while attempting to exit the mine during an emergency. The secondary purpose of SCSRs, however, is to provide a source of breathable air to miners that cannot exit a mine during an emergency and must await rescue by personnel on the surface. Emergency shelters/chambers also provide a source of breathable air for trapped miners unable to escape from the mine. Wireless emergency communication devices and wireless tracking devices are intended to assist in both directing miners out of an endangered mine and locating trapped miners awaiting rescue by personnel on the surface. In addition to the purposes stated above, the intended purpose of these rules is to establish a regulatory regime enabling the proper implementation of these technologies in West Virginia's underground mines.

**§56-4-3. Definitions.**

3.1. Unless herein defined, all terms used in this rule shall have the same meaning as they are defined in W. Va. Code §22A-1-2 and W. Va. Code §22A-2-55.

3.2. "Code" shall mean the Code of West Virginia, 1931, as amended.

3.3. "Director" shall herein refer to the Director of the Office of Miners' Health, Safety and Training.

**§56-4-4. Mine Safety Technology Task Force.**

4.1. Within seven (7) calendar days of the effective date of these rules, the Director shall establish a Mine Safety Technology Task Force to provide technical and other assistance related to the implementation of the new technological requirements set forth in section fifty-five, article two, chapter twenty-two-a of the Code. The task force shall be comprised of three persons from the major employee organization representing coal miners in this state and three persons from the major trade association representing underground coal operators in this state. All actions of the task force shall be by unanimous vote.

4.2. The task force, working in conjunction with the Director, shall immediately commence a study to determine the commercial availability and functional and operational capability of the SCSRs, emergency shelters/chambers, wireless communication devices and wireless tracking devices required hereunder. The task force

shall also study issues related to the implementation, compliance and enforcement of the safety requirements contained herein. Additionally, the task force may study related safety measures, including the provision of additional surface openings and/or escapeways in lieu of or in addition to the provision of SCSRs or emergency shelters/chambers. In conducting its study, the task force shall, where possible, consult with, among others, mine engineering and mine safety experts, radiocommunication and telemetry experts and relevant state and federal regulatory personnel.

4.3. The Director, or his designee, shall preside over all meetings of the working group.

4.4. Within ninety (90) calendar days of the effective date of these rules, the task force shall provide the Director with a written report summarizing its findings regarding the commercial availability and functional and operational capability of the SCSRs, emergency shelters/chambers, wireless communication devices, wireless tracking devices and related safety measures required hereunder. The report shall also include the task force's findings and recommendations regarding implementation, compliance and enforcement of the safety requirements contained herein. The report also shall set forth the task force's recommended implementation, compliance and enforcement plans regarding the aforementioned technologies.

4.5. Prior to approving any emergency shelter/chamber,

wireless communication device or wireless tracking device pursuant to the provisions of sections 5.4, 8.1, and 9.1 of these rules, respectively, the Director shall review the task force's written report and the findings set forth therein and shall consider such findings in making any approval determination.

**§56-4-5. Self-Contained Self-Rescue Devices Provided for Escape from Mines.**

5.1. Each person underground shall be provided a SCSR in accordance with the provisions of subdivision (1), subsection (f), section fifty-five, article two, chapter twenty-two-a of the Code. In addition, the operator shall provide caches of additional SCSRs or devices providing equivalent protection throughout the mine in accordance with a Storage Cache Plan approved by the Director.

5.1.1. Each SCSR shall be adequate to protect a miner for one (1) hour or longer: *Provided, however,* That nothing contained herein shall preclude an operator from providing each person underground with a self-rescue device or a SCSR that provides less than one (1) hour of protection that is nevertheless adequate to provide an amount of breathable air sufficient for travel to the nearest storage cache or escape facility: *Provided, further:* That the total amount of breathable air provided by the operator meets the minimum amount of three (3) hours of cumulative protection contemplated by the provisions of Section 5.1 and Section 5.2.1 of these rules, as well as the minimum protection amounts mandated by

the provisions of 5.3.3 and 5.4.3.

5.1.2. Each cache shall be housed in a container constructed of fire retardant material or material treated with a fire retardant paint or laminate and constructed in a manner capable of protecting the self-contained self rescue devices stored therein from damage by fire.

5.1.3. Each operator shall train each miner in the use of the SCSRs employed at the mine, and refresher training courses for all underground employees shall be held during each calendar year. This training shall be in addition to the annual retraining required by MSHA.

5.2. One cache shall be placed at a readily available location within five hundred (500) feet of the nearest working face in each working section of the mine. One cache shall be placed at a readily available location within five hundred (500) feet of each active construction or rehabilitation site within the mine.

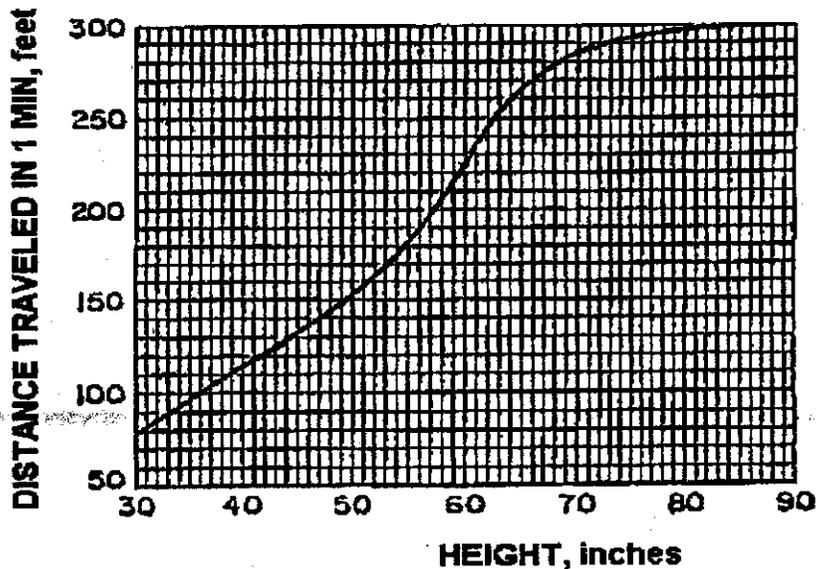
5.2.1. Each cache placed at each working section and each active construction or rehabilitation site shall contain sufficient additional SCSRs to provide each miner reasonably expected to be at the working section or active construction or rehabilitation site with no less than two (2) additional SCSRs, or an equivalent amount of breathable air for escape. During crew changes involving a

mantrip at a working section or an active construction or rehabilitation site, SCSRs stored on such mantrip shall satisfy the total number of SCSRs required for such personnel.

5.3. Additional storage caches shall also be placed in readily available locations throughout the remainder of the mine as follows:

5.3.1. Beginning at the storage cache located at the working section or active construction or rehabilitation site, and continuing to the surface or nearest escape facility leading to the surface, the operator shall station additional storage caches at calculated intervals that a miner may traverse in no more than thirty (30) minutes traveling at a normal pace, taking into consideration the height of the coal seam.

5.3.2. Said intervals shall be calculated in accordance with the following chart:



5.3.3. Each such additional cache shall contain a number of additional SCSRs equal to or exceeding the total number of employees reasonably likely to be in that area.

5.4. Emergency Shelters/Chambers for Use in the Event That Immediate Exit is not Possible.

5.4.1. An emergency shelter/chamber shall be maintained within one thousand (1000) feet of the nearest working face in each working section. Such emergency shelter/chamber shall be approved by the Director and shall be constructed and maintained in a manner prescribed by the Director.

5.4.2. Upon the Director's receipt of the written report

required by section 4.4 of these rules, the Director shall review the written report and the findings set forth therein and shall consider such findings in making approval determinations regarding any emergency shelter/chamber.

5.4.3. Any emergency shelter/chamber approved by the Director shall be:

a. equipped to provide each miner at the working section with no less than twenty-four (24) hours of breathable air;

b. constructed in such a manner so as to reasonably exclude dangerous air and gases from the interior of the rescue shelter/chamber;

c. properly equipped with first aid materials;

d. equipped with sufficient amounts of food and water to sustain each miner at the working section for at least twenty-four (24) hours while awaiting rescue;

e. equipped with a device for communication with rescuers or other persons on the surface; and

f. maintained in accordance with applicable MSHA requirements.

5.4.4. As soon as practicable, the Director shall notify all operators of the emergency shelters/chambers approved for use in underground coal mines.

5.4.5. Each operator shall train each miner in the use of the approved emergency shelter/chamber employed at the mine, and

refresher training courses for all underground employees shall be held during each calendar year. This training shall be in addition to any annual retraining required by MSHA.

5.4.6. If there are no emergency shelters/chambers approved within one year of the Director's receipt of the task force's report, operators shall install in lieu of an emergency shelter/chamber, caches of SCSRs sufficient to provide each miner reasonably expected to be at the working section with no less than sixteen(16) additional SCSRs, or an equivalent amount of breathable air.

5.4.7. Sixteen (16) SCSRs may be used in lieu of an emergency shelter/chamber when mine design or layout prohibits use of such facilities.

**§56-4-6. Storage Cache Plan.**

6.1. Within thirty (30) calendar days of the effective date of these rules, all operators of all mines shall submit a Storage Cache Plan for approval by the Director. The design, development, submission, and implementation of the Storage Cache Plan shall be the responsibility of the operator of each mine.

6.2. Within thirty (30) calendar days after submission of the initial Storage Cache Plan, the Director shall either approve the plan as submitted, or shall reject and return the plan to the operator for modification and resubmission, stating in detail the reasons for such rejection. If the plan is rejected, the Director

shall give the operator a reasonable length of time, not to exceed fifteen (15) calendar days, to modify and resubmit such plan.

6.3. In developing the initial Storage Cache Plan, the operator shall take into consideration the number of employees of the particular mine, the location of the particular mine, the physical features of the particular mine, and any other aspect of the particular mine the operator deems relevant to the development of the Storage Cache Plan.

6.4. The Storage Cache Plan shall include the following:

6.4.1. The size and physical features of the mine;

6.4.2. The maximum number of persons underground during each working shift;

6.4.3. The proposed location of the various storage caches and the emergency shelter/chamber in relation to persons underground; and

6.4.4. A schedule of compliance, which shall include:

a. a narrative description of how the operator will achieve compliance with subdivision (2), subsection (f), section fifty-five, article two, chapter twenty-two-a of the Code.

b. a schedule of measures, including an enforceable sequence of actions with milestones, leading to compliance; and

c. a statement indicating when the implementation of the proposed plan will be complete.

6.4.5. Any such schedule of compliance shall be

supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

6.5. Each operator shall submit as attachments to its Storage Cache Plan the following:

6.5.1. A statement that the analysis and evaluation required by section 6.3 of these rules has been completed;

6.5.2. A statement indicating the training dates for the use of the SCSRs; and

6.5.3. The name of the person or persons representing the operator, including his or her title, position, mailing address and telephone number, who can be contacted by the Director for all matters relating to the Storage Cache Plan and the weekly inspections of each cache.

6.6. Within thirty (30) calendar days of the Director's approval of the plan, the operator shall provide to the Director a copy of any contract, purchase order, or other proof of purchase of such number of additional SCSRs consistent with the operator's schedule of compliance.

6.7. At any time after the Director has approved an operator's Storage Cache Plan, the operator may submit proposed modifications or revisions to its plan along with the reasons therefor to the Director.

6.7.1. Within thirty (30) calendar days after receipt by the Director of any proposed revisions or modifications to the

Storage Cache Plan, the Director shall either approve or reject the revisions, stating in detail the reasons for such rejection.

6.7.2. The Director may require modifications to a Storage Cache Plan at any time following the investigation of a fatal accident or serious injury, as defined by Title 36, Series 19, Section 3.2, if such modifications are warranted by the findings of the investigation.

6.7.3. Within thirty (30) calendar days of the Director notifying operators of the emergency shelters/chambers approved by the Director under these rules, the operator shall submit a revised Storage Cache Plan in accordance with the provisions of this section setting forth the type of emergency shelter/chamber to be installed pursuant to section 5.4 these rules. The revised storage cache plan shall also include a revised schedule of compliance and information regarding the emergency shelter/chamber that corresponds to the information regarding the storage caches required under this section of these rules.

6.8. If the Director, in his sole discretion, determines that an operator has failed to provide a Storage Cache Plan, has provided an inadequate Storage Cache Plan, has failed to comply with its approved Storage Cache Plan, or has failed to provide a copy of any contract, purchase order or other proof of purchase required under this section, in an effort to delay, avoid or circumvent compliance with subdivision (2), subsection (f), section

fifty-five, article two, chapter twenty-two-a of the Code or these rules, the Director shall issue a cessation order to the operator for the affected mine.

**§56-4-7. Placement of Intrinsically Safe Battery-Powered Lights and Lifeline Cords.**

7.1. Intrinsically safe battery-powered strobe lights shall be affixed to each cache of SCSRs and shall operate continuously or be capable of automatic activation in the event of an emergency.

7.1.1. All intrinsically safe battery-powered strobe lights affixed to each cache of SCSRs shall be approved by MSHA and maintained in accordance with applicable MSHA requirements.

7.2. A reflective sign with the words "SELF-RESCUER" or "SELF-RESCUERS" shall be conspicuously posted at each such cache and reflective direction signs shall be posted leading to each cache.

7.3. Lifeline cords installed in primary escapeways shall be attached to each cache and extend from the last permanent stopping to the surface or nearest escape facility, excluding belt and track entries, and must:

7.3.1. be made of durable material;

7.3.2. be marked with reflective material every twenty-five (25) feet;

7.3.3. be located in such a manner for miners to use effectively to escape; and

7.3.4. have directional indicators signifying the route

of escape placed at intervals not exceeding one hundred (100) feet.

7.4. The operator shall conduct weekly inspections of each cache of additional SCSRs, the affixed strobe lights, and each lifeline cord or other similar device to ensure that each will function properly in the event of an emergency.

**§56-4-8. Wireless Emergency Communication Devices.**

8.1. A wireless emergency communication device approved by the Director shall be worn by each person underground and shall be provided by the operator.

8.1.1. As soon as practicable, the Director shall notify all operators of the wireless emergency communication devices approved by the Director for use by each person underground pursuant to subdivision one, subsection (g), section fifty-five, article two, chapter twenty two-a of the Code.

8.1.2. The wireless emergency communication devices approved by the Director must be capable of receiving emergency communications from the surface at any location throughout the mine.

8.1.3. Each operator shall train each miner in the use of the approved device employed at the mine, and refresher training courses for all underground employees shall be held during each calendar year.

8.2. All wireless emergency communication devices approved by the Director shall have received prior approval by MSHA and be

maintained in accordance with applicable MSHA requirements.

8.3. Within sixty (60) calendar days of the Director giving notice of the approved wireless emergency communications devices, all operators shall submit to the Director a schedule of compliance.

8.3.1. The schedule of compliance shall include:

a. a narrative description of how the operator will achieve compliance with subsection (g), section fifty-five, article two, chapter twenty-two-a of the Code;

b. a schedule of measures, including an enforceable sequence of actions with milestones, leading to compliance; and

c. a statement indicating when full compliance will be achieved.

8.3.2. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

8.3.3. Within thirty (30) calendar days after submission of the schedule of compliance, the Director shall either approve the schedule of compliance as submitted, or shall reject and return the schedule of compliance to the operator for modification and resubmission, stating in detail the reasons for such rejection. If the schedule of compliance is rejected, the Director shall give the operator a reasonable length of time, not to exceed fifteen (15) calendar days, to modify and resubmit such schedule of compliance.

8.3.4. Where applicable, the operator shall submit certified progress reports no less frequently than every sixty (60) calendar days until full compliance is achieved.

8.4. In developing the schedule of compliance, the operator shall take into consideration the number of employees of the particular mine, the location of the particular mine, the physical features of the particular mine and any other aspect of the particular mine relevant to the provision and operation of the wireless emergency communication devices.

8.5. Within thirty (30) calendar days of the Director's approval of the operator's schedule of compliance, the operator shall provide to the Director a copy of any contract, purchase order, or other proof of purchase of such wireless emergency communication devices consistent with the operator's schedule of compliance.

8.6. If the Director, in his sole discretion, determines that an operator has failed to provide a schedule of compliance, has provided an inadequate schedule of compliance, has failed to meet its approved schedule of compliance or has failed to provide a copy of any contract, purchase order or other proof of purchase required under this section, in an effort to delay, avoid or circumvent compliance with subsection (g), section fifty-five, article two, chapter twenty-two-a of the Code or these rules, the Director shall issue a cessation order to the operator for the affected mine.

**§56-4-9. Wireless Tracking Devices.**

9.1. A wireless tracking device approved by the Director shall be worn by each person underground and shall be provided by the operator.

9.1.1. As soon as practicable, the Director shall notify all operators of the wireless tracking devices approved by the Director for use by each person underground pursuant to subdivision one, subsection (h), section fifty-five, article two, chapter twenty two-a of the Code.

9.1.2. The wireless tracking devices approved by the Director must be capable of providing real-time monitoring of the physical location of each person underground, which at a minimum shall mean the capability to identify the presence of each person underground in the event of an emergency.

9.1.3. No person shall discharge or in any other way discriminate against any miner based on information gathered by such wireless tracking device during non-emergency monitoring.

9.1.4. Each operator shall train each miner in the use of the approved device employed at the mine, and refresher training courses for all underground employees shall be held during each calendar year.

9.1.5. The operator shall install in or around the mine any and all equipment necessary to provide real-time emergency monitoring in accordance with the provisions of section 9.1.2 of

these rules.

9.2. All wireless tracking devices approved by the Director shall have received prior approval by MSHA and be maintained in accordance with applicable MSHA requirements.

9.3. Within sixty (60) calendar days of the Director giving notice of the approved wireless tracking devices, all operators shall submit to the Director a schedule of compliance.

9.3.1. The schedule of compliance shall include:

a. a narrative description of how the operator will achieve compliance with subsection (h), section fifty-five, article two, chapter twenty-two-a of the Code;

b. a schedule of measures, including an enforceable sequence of actions with milestones, leading to compliance; and

c. a statement indicating when full compliance will be achieved.

9.3.2. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

9.3.3. Within thirty (30) calendar days after submission of the schedule of compliance, the Director shall either approve the schedule of compliance as submitted, or shall reject and return the schedule of compliance to the operator for modification and resubmission, stating in detail the reasons for such rejection. If the schedule of compliance is rejected, the Director shall give the

operator a reasonable length of time, not to exceed fifteen (15) calendar days, to modify and resubmit such schedule of compliance.

9.3.4. Where applicable, the operator shall submit certified progress reports no less frequently than every sixty (60) calendar days until full compliance is achieved.

9.4. In developing the schedule of compliance, the operator shall take into consideration the number of employees of the particular mine, the location of the particular mine, the physical features of the particular mine, and any other aspect of the particular mine relevant to the provision and operation of the wireless tracking devices.

9.5. Within thirty (30) calendar days of the Director's approval of the operator's schedule of compliance, the operator shall provide to the Director a copy of any contract, purchase order, or other proof of purchase of such wireless tracking devices consistent with the operator's approved schedule of compliance.

9.6. If the Director, in his sole discretion, determines that an operator has failed to provide a schedule of compliance, has provided an inadequate schedule of compliance, has failed to meet its approved schedule of compliance or has failed to provide a copy of any contract, purchase order or other proof of purchase required under this section, in an effort to delay, avoid or circumvent compliance with subsection (h), section fifty-five, article two, chapter twenty-two-a of the Code or these rules, the Director shall

issue a cessation order to the operator for the affected mine.

EMERGENCY RULE QUESTIONNAIRE

DATE: February 1, 2006

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Office of Miners' Health, Safety and Training,

1615 Washington Street, East, Charleston, WV 25311-2126

304-558-1425

EMERGENCY RULE TITLE: Emergency Rules Governing Protective Clothing and Equipment

1. Date of filing February 1, 2006

2. Statutory authority for promulgating emergency rule:

W Va Code 22A-2-55

3. Date of filing of proposed legislative rule: \_\_\_\_\_

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? New language.

5. Has the same or similar emergency rule previously been filed and expired?

No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.

The instant emergency rules are necessary to protect the health, safety and welfare of miners from the inherent dangers of underground mining. Given recent events the Legislature passed SB247 requiring enhanced requirements for the protective equipment and clothing worn by underground miners. Full and complete implementation of SB247 necessitates promulgation of these emergency rules.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

RULES

Rule Title: 56 CSR 4 GOVERNING PROTECTIVE CLOTHING AND EQUIPMENT

Type of Rule:  Legislative  Interpretive  Procedural

Agency: WV OFFICE OF MINERS HEALTH SAFETY & TRAINING

Address: 1615 WASHINGTON STREET EAST

CHARLESTON, WV 25311-2126

Phone Number: 304 558-1425 Email: jdconaway@mines.state.wv.us  
caphillips@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.

THE PROPOSED RULL WILL HAVE NO FINANCIAL EFFECT ON THE AGENCY'S BUDGET. ALL INSPECTION AND COMPLIANCE WILL BE ACCOMPLISHED THROUGH EXISTING AGENCY STAFF MANDATED DUTIES.

**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 -	- 0 -	- 0 -
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues			

Rule Title: 56 CSR 4 RULES GOVERNING PROTECTIVE CLOTHING AND EQUIPMENT



*State of West Virginia*  
Joe Manchin III, Governor

WV Office Of Miners' Health, Safety & Training  
Doug Conaway, Director  
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**SPECIFIC STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE  
RULE TO BE FILED AS EMERGENCY 56 CSR 4**

In January 2006 the State of West Virginia experienced two coal mine tragedies where 14 miners were trapped and perished underground, one from an explosion and one from a belt fire.

In both cases additional breathing apparatus would have been valuable to these miners and would have given them the extra oxygen needed to survive while awaiting rescue efforts.

This rule requires the coal operator to provide sufficient additional self-contained self-rescue devices to provide each miner at the working section with no less than sixteen (16) additional self-contained self-rescue devices. It also gives the Director authority to require an increase number of the required minimum if deemed necessary.



L. Thomas Bulla, Secretary  
Department of Commerce  
State Capitol  
Building 6, Room 525  
Charleston, WV 25305-0311

*State of West Virginia*  
*Joe Manchin III*  
*Governor*

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February 24, 2006

Mr. James Mitchell Dean  
Acting Director  
Office of Miners' Health, Safety  
and Training  
1615 Washington Street East  
Charleston, West Virginia 25311-2126

Dear Mr. Dean:

Upon review of your request to file an emergency legislative rule under Title 56, Series 4, which governs safety provisions for emergency rules governing protective clothing and equipment in the State of West Virginia, I find your proposed rule satisfactory and approve your filing of the regulations.

Sincerely,

A handwritten signature in cursive script, appearing to read "L. Thomas Bulla".

L. Thomas Bulla  
Cabinet Secretary

TB/db