

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #5

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2015 JUL 30 P 3:12

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: Office of Miners' Health, Safety and Training TITLE NUMBER: 56

CITE AUTHORITY: W. Va. Code 22A-1-6

RULE TYPE: PROCEDURAL _____ INTERPRETIVE X

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

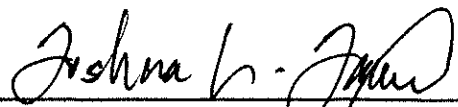
TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 21

TITLE OF RULE BEING PROPOSED: Self-Contained Self-Rescue Device Immediate Reach Interpretive Rule

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

EFFECTIVE DATE OF THIS RULE IS 09/01/2015


Authorized Signature

Brief Summary of Proposed Rule

Office of Miners' Health, Safety and Training

Title 56 Series 21

The Office of Miners' Health, Safety and Training proposes to clarify its interpretation of the term "immediate reach" found in W. Va. Code § 22A-2-55(f)(1) wherein the statute requires that an individual shall either wear a self-contained self-rescue device, or have one accessible within his/her immediate reach. The agency interprets immediate reach to mean within arm's length that being no more than three (3) feet from the individual.

Statement of Circumstances

Office of Miners' Health, Safety and Training

Title 56 Series 21

The Office of Miners' Health, Safety and Training is charged with enforcing West Virginia's mining laws which includes statutes and regulations pertaining to miners' safety. One safety device which a miner is required to possess when underground is a self-contained self-rescue device. Possession of a self-contained self-rescue device while underground is mandated in W. Va. Code § 22A-2-55(f)(1) wherein the statute provides that the individual shall either wear the self-contained self-rescue device, or have it within his/her immediate reach. The term immediate reach is not defined in the statute, but is referenced elsewhere in the regulations pertaining to the training objectives for underground coal mine health and safety training courses (W. Va. Code R. § 48-2-4.4.7(11)) as being within "easy reach (three (3) feet)". The agency interprets "immediate reach" as being synonymous with "easy reach" in that both mean within arm's length which is a distance of no more than three (3) feet from an individual. The interpretive rule will clarify that the language found in the statute is in harmony with that found in the regulation and provide a bright line standard for enforcement.

56CSR21
TITLE 56
INTERPRETIVE RULE
WEST VIRGINIA OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING

SERIES 21
SELF-CONTAINED SELF-RESCUE DEVICE
IMMEDIATE REACH INTERPRETIVE RULE

§56-21-1. General.

1.1. Scope and Purpose. -- The purpose of this interpretive rule is to disclose how the Office of Miners' Health, Safety and Training will interpret, clarify and explain the term immediate reach, codified in W. Va. Code § 22A-2-55(f)(1).

1.2. Authority. -- W. Va. Code § 22A-1-6.

1.3. Filing Date. -- 07/30/2015.

1.4. Effective Date. -- 9/01/2015.

§56-21-2. Immediate Reach.

2.1. The Office of Miners' Health, Safety and Training notes that pursuant to W. Va. Code § 22A-2-55(f)(1), when an individual is underground the self-contained self-rescue device must be worn, or located within immediate reach. The Office of Miners' Health, Safety and Training interprets immediate reach to mean arm's reach which is a distance of no more than three (3) feet from the individual.