



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Miners Health Safety And Training TITLE-SERIES: 56-04
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: Rule Governing Protective Clothing and
Equipment

CITE STATUTORY AUTHORITY: W. Va. Code 22A-2-55(j)

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) H.B. 4086

Section W. Va. Code 64-10-3(b) Passed On 2/29/2024 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

April 24, 2024

This rule shall terminate and have no further force or effect from the following date:

August 01, 2029

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

Yes

Garner Marks -- 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.

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TITLE 56

LEGISLATIVE RULE

OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING

SERIES 4

RULE GOVERNING PROTECTIVE CLOTHING AND EQUIPMENT

§56-4-1. General.

1.1. Scope. -- This rule pertains to the implementation of provisions of W. Va. Code §22A-2-55, relating to the regulation of protective clothing and equipment worn by miners underground by the Office of Miners' Health, Safety and Training.

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

1.3. Filing Date. -- April 24, 2024.

1.4. Effective Date. -- April 24, 2024.

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon August 1, 2029.

§56-4-2. Preamble.

2.1. Purpose – The purpose of this rule series 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. Coal mine operators are required to provide each underground miner with certain protective equipment and this rule details 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.

2.2. Escape is the primary procedure to be used by miners in the event of an emergency underground. Self-contained self-rescue devices (SCSRs) are intended to isolate miners from hazardous gases and provide breathable air while attempting to escape the mine during an emergency. In the event that escape-ways are impassable, emergency shelters/chambers provide a source of breathable air for miners unable to escape from the mine. Wireless emergency communication and tracking/locating devices are intended to assist in exchanging information between escaping miners, between said miners and those on the surface following an accident, and to assist in locating miners to aid their escape. In addition to the purposes stated above, the intended purpose of this rule is to establish a regulatory regime enabling the advancement of mine safety and health technologies and the proper implementation of these technologies in West Virginia's underground mines.

§56-4-3. Definitions.

3.1. Unless the context in which a word or phrase appears requires a different meaning, all terms used in this rule that are not defined herein shall have the meanings set forth in W. Va. Code §22A-1-2.

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

3.3. "Director" shall mean the Director of the Office of Miners' Health, Safety and Training.

3.4. "Operator" shall mean any firm, corporation, partnership, or individual operating any coal mine or part thereof, or engaged in the construction or maintenance of any facility associated with a coal mine, and shall include any independent contractor at a coal mine.

3.5. "Independent Contractor" shall mean any firm, corporation, partnership or individual that contracts to perform services or construction at a coal mine, excluding mine vendors, office equipment suppliers, service or delivery personnel; provided they or their employees do not go underground.

3.6. "Self-Contained Self-Rescuer" (SCSR) shall mean a type of closed-circuit self-contained breathing apparatus or its equivalent approved by the Mine Safety and Health Administration of the United States Department of Labor for the purpose of isolating a miner from hazardous gases and providing breathable air to aid in an escape.

3.7. "SCSR Storage Cache" shall mean a non-combustible container constructed to withstand normal mine conditions, protect a number of SCSRs, and allow easy access for inspection of the SCSRs and easy access for miners who are escaping.

3.8. "Emergency Shelter/Chamber" shall mean an enclosed space located within 1,000 feet of the nearest working face with all sides made from man-made materials whose function is to protect the occupants from hazardous gases and provide breathable air in the event escape is not possible.

3.9. "Emergency communications" shall mean the transmission and reception of voice, data and/or information regarding an unexpected event requiring immediate action.

3.10. "Wireless" shall mean allowing individual communications by a miner through a mine communication and tracking/locating system without a physical connection.

3.11. "Communication device" shall mean equipment that is a component of an integrated mine communication and tracking/locating system for purposes of emergency communication.

3.12. "Physical location" shall mean the position of a miner in relation to a tracking device at a known location to enhance escape and/or rescue.

3.13. "Tracking/location" shall mean knowing the physical location of miners at the moment of an accident and as escape progresses if the tracking/location system being used is still functional.

3.14. "Tracking/locating device" shall mean equipment that is a component of an integrated mine communication and tracking/locating system for the purpose of providing the physical location of a miner during an emergency.

3.15. "Apparent-Temperature" shall mean a heat stress indicator that considers the effects of temperature and humidity.

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

4.1. Within 7 calendar days of the effective date of this rule, 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 W. Va. Code §22A-2-55. The task force shall be comprised of 3 miners from the major employee organization representing coal miners in this state and 3 miners 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 study technology and technology usage issues related to the implementation, compliance and enforcement of the safety requirements covered under W. Va. Code R. §56-4. Additionally, the task force may study related safety measures as requested by the Director. In conducting its study, the task force shall, where possible, consult with, among others, mine engineering and mine safety experts, technology experts and relevant state and federal regulatory personnel.

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

4.4. Prior to adopting or modifying any technological safety requirement pursuant to W. Va. Code R. §56-4, the Director shall request recommendations from the task force and shall consider its written report on the subject in making any determination.

4.5. The Director shall convene the Mine Safety Technology Task Force no less than once per month.

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

5.1. Each miner working underground shall be provided an SCSR in accordance with the provisions of W. Va. Code §22A-2-55(f). In addition, the operator shall provide storage caches of additional SCSRs throughout the mine in accordance with a Storage Cache Plan approved by the Director pursuant to W. Va. Code R. §56-4-6.

5.2. Each SCSR shall be approved to provide at least 60 minutes of breathable air by the Mine Safety and Health Administration (MSHA) of the United States Department of Labor: provided, that nothing contained herein shall preclude an operator from providing each miner working underground an SCSR with an MSHA approved rating less than 60 minutes of breathable air that is adequate to provide for twice the travel time as defined in the chart in W. Va. Code R. §56-4-6 to the nearest storage cache, as defined in W. Va. Code R. §56-4-6, or an escape facility.

5.3. Each operator shall provide training in the proper use of SCSRs in simulated emergency situations in all required SCSR training: provided, that such simulations may be conducted on the surface. Training shall be in compliance with all manufacturers' requirements and shall include, but not be limited to: the risks of toxic gases; manufacturers' required daily inspections; donning and starting the SCSR; limitations of the SCSR; ways to maximize duration of the unit; changing between SCSRs; communicating without removing the mouthpiece; importance and use of goggles; and how to know if the device has failed and what to do if it does fail.

5.4. Pursuant to W. Va. Code §22A-1-23, operators and independent contractors shall report to the Director all SCSRs in-service and list the following: manufacturer; model; serial number; mine/contractor ID#; service dates; and results of required inspections. This information shall be submitted electronically as defined by the Director, updated quarterly and will include information on any units removed from service along with the reason(s).

5.5. The Director shall compile and analyze the results of this information and distribute a report within 30 days by posting the report on the MHS&T web page: <https://minesafety.wv.gov>.

5.6. The Director shall establish a program to periodically evaluate the quality of SCSRs in-service in West Virginia mines through collection and testing of a statistically significant number of units of differing ages and representative of models used West Virginia mines. The results of such evaluations will be published on the MHS&T web page: <https://minesafety.wv.gov>.

§56-4-6. Self-Contained Self-Rescue Device Storage Cache Plan.

6.1. Within 30 calendar days of the effective date of this rule, all operators of all mines shall submit an SCSR Storage Cache Plan for approval by the Director in accordance with W. Va. Code §22A-1-36. The design, development, submission, and implementation of the SCSR Storage Cache Plan shall be the responsibility of the operator of each mine.

6.2. Operators shall revise all approved SCSR storage cache plans and submit those to the Director no later than 60 days after any amendments to this rule become final.

6.3. Within 30 calendar days after submission of the SCSR 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 reason(s) for such rejection. If the plan is rejected, the Director shall give the operator a reasonable length of time, not to exceed 15 calendar days, to modify and resubmit such plan.

6.4. In developing the SCSR Storage Cache Plan, the operator shall take into consideration the following: the need for SCSRs in the accidents described in W. Va. Code §22A-2-66; 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 SCSR Storage Cache Plan.

6.5. Each SCSR Storage Cache shall be housed in a container constructed to protect the SCSRs from normal operational damage; be made of a material that is non-combustible; shall be easy to open during an emergency escape; be noted on the escape-way map required by W. Va. Code §22A-2-1; and included in the mine rescue plan required pursuant to W. Va. Code §22A-1-35(q).

6.6. One SCSR storage cache shall be placed at a readily available location within 500 feet of the nearest working face in each working section of the mine and each active construction or rehabilitation site. Distances greater than 500 feet, but not to exceed 1,000 feet, are permitted upon approval of the Director. However, where miners are provided with personal SCSRs that are MSHA rated for less than 60 minutes, travel to these storage caches shall not exceed 5 minutes as determined by the height/travel time table as specified in W. Va. Code R. §56-4-6.9.2.

6.7. Each of the storage caches specified in Section 6.6 shall contain 2 SCSRs that will provide at least 60 minutes of MSHA rated duration per unit for each miner. When each miner carries an SCSR that is MSHA rated for less than 60 minutes, the storage cache shall hold devices equivalent to 3 60-minute MSHA rated SCSRs for each miner. The total number of SCSRs in a stationary storage cache location will be based on the total number of miners reasonably likely to be in that area. During crew changes involving a mantrip at a working section or an active construction or rehabilitation site, a number of mantrip cached 60 minute or

greater MSHA rated SCSRs equal to the total number of miners reasonably likely on the mantrip shall satisfy the total number of SCSRs required for such personnel.

6.8. Operators shall ensure that storage caches required in Section 6.6 contain: an escape kit containing a hammer; a tagline; a supply of chemical light sticks; and an escape-way map required by W. Va. Code §22A-2-1.

6.9. Additional storage caches of 60 minute or longer MSHA rated SCSRs shall also be placed in readily available locations throughout the remainder of the mine as follows:

6.9.1. Beginning at the storage cache located at the working section or active construction or rehabilitation site and beltlines, pumping and bleeder areas, and continuing to the surface or nearest escape facility leading to the surface pursuant to W. Va. Code §22A-2-60, the operator shall station additional storage caches of 60 minute or longer MSHA rated SCSRs containing a number of additional SCSRs equal to or exceeding one each for the total number of miners reasonably likely to be in that area at calculated intervals that a miner may traverse in no more than 30 minutes traveling at a normal pace, taking into consideration the height of the coal seam and utilizing the travel times as specified in W. Va. Code R. §56-4-6.9.2. If an SCSR has an MSHA approved duration greater than 60 minutes, the intervals between storage caches shall be calculated at the distance traveled in 1/2 the approved duration.

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

Height	Travel/ Minute	Height	Travel/ Minute
28 inches	70 feet	56 inches	180 feet
32 inches	90 feet	60 inches	220 feet
36 inches	100 feet	64 inches	270 feet
40 inches	120 feet	68 inches	280 feet
44 inches	135 feet	72 inches	290 feet
48 inches	150 feet	76 inches	295 feet
52 inches	160 feet	80 inches	300 feet

6.10. The SCSR Storage Cache Plan shall include the following:

6.10.1. The size and physical features of the mine;

6.10.2. The maximum number of miners underground during each working shift;

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

6.10.4. A schedule of compliance, which shall include:

6.10.4.a. A narrative description of how the operator will achieve compliance with W. Va. Code R. §56-4-6.

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

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

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

6.11.1. A statement that the analysis and evaluation required by Section 6.4. of this rule has been completed;

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

6.11.3. 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 SCSR Storage Cache Plan and the weekly inspections of each storage cache.

6.12. Within 30 calendar days of the Director's approval of the plan, the operator shall submit 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.

6.13. After the Director has approved an operator's SCSR Storage Cache Plan, the operator shall submit revisions to the plan at any time that changes in the operational conditions result in substantive modifications. In addition, at any time after the Director has approved an operator's SCSR Storage Cache Plan, the operator may submit proposed modifications or revisions to its plan along with the reasons therefor to the Director.

6.13.1. Within 30 calendar days after receipt by the Director of any proposed revisions or modifications to the SCSR Storage Cache Plan, the Director shall either approve or reject the revisions, stating in detail the reasons for such rejection.

6.13.2. 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 W. Va. Code R. §36-19-3.2, if such modifications are warranted by the findings of the investigation.

6.14. If the Director, in his/her sole discretion, determines that an operator has failed to provide an SCSR Storage Cache Plan or progress report, has provided an inadequate SCSR Storage Cache Plan or progress report, has failed to comply with its approved SCSR Storage Cache Plan or compliance schedule, 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 W. Va. Code §22A-2-55 or this rule, the Director shall issue a cessation order to the operator for the affected mine in accordance with W. Va. Code §22A-1-15.

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

7.1. Intrinsically safe battery-powered strobe lights approved by the Director shall be affixed to each storage 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 storage cache of SCSRs shall be approved by the Director and MSHA and maintained in accordance with applicable MSHA requirements.

7.1.2. Prior to approval of any MSHA certified intrinsically safe battery-powered strobe light, the Director shall have prepared an independent analysis of the added risk incurred from added battery powered devices throughout the mine in the event of a catastrophic explosion.

7.1.3. When determining if intrinsically safe battery-powered strobe lights present an acceptable risk, the Director shall review those rated intrinsically safe by MSHA and may approve them for use in West Virginia mines. A list of approved intrinsically safe battery-powered strobe lights shall be maintained on the MHS&T web site: <https://wvminesafety.wv.gov>.

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

7.3. Lifeline cords installed in primary escape-ways shall be attached to each storage cache container 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 flame-resistant material;

7.3.2. Be marked with reflective material every 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 100 feet.

7.4. In lieu of installed lifelines in track or belt entries, markers such as floor mats with arrows, fish plate reflectors, red/green lasers shall be installed at distances not to exceed 1,000 feet or line of sight, or other equivalent devices may be used if approved by the Director.

§56-4-8. Emergency Shelters/Chambers.

8.1. An emergency shelter/chamber shall be maintained within 1,000 feet of the nearest working face in each working section. Each emergency shelter/chamber shall be approved by the Director and constructed and maintained in a manner prescribed by the Director.

8.2. The Director may approve, as an alternative to a shelter/chamber, an additional surface opening located no more than 1,000 feet from the nearest working face and accurately located on escape-way maps as required by W. Va. Code §22A-2-1.

8.3. The Director shall acquire, no later than July 1, 2006, the necessary technical/engineering support needed to evaluate the performance of emergency shelter/chamber components/systems, and to review the effectiveness of emergency shelter/chamber plans.

8.4. The Director shall, no later than July 10, 2006, issue an open opportunity for emergency shelter/chamber providers to submit products for approval. The Director shall maintain a current list of pending and approved emergency shelter/chambers on the West Virginia MHS&T web site: <https://minesafety.wv.gov>.

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8.5. Providers of emergency shelter/chamber seeking approval shall submit documentation prescribed by the Director that shall include a certification by an independent West Virginia licensed professional engineer that the proposed product meets the requirements set forth in Section 8, a description of the process used in making that determination and a certification in the following form: "I, the undersigned, hereby certify that this product, to the best of my knowledge and belief, meets or exceeds all requirements set forth in W. Va. Code R. §56-4-8."

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

8.6.1. Provide a minimum of 48 hours life support (air, water, emergency medical supplies, and food) for the maximum number of miners reasonably expected on the working section;

8.6.2. Be capable of surviving an initial event with a peak overpressure of 15 psi for 3 seconds and a flash fire as defined by National Fire Protection Association standard NFPA-2113 of 300 degrees Fahrenheit for 3 seconds;

8.6.3. Be constructed in a manner such that it will be protected under normal handling and during pre-event mine conditions;

8.6.4. Provide for rapidly establishing and maintaining an internal shelter atmosphere of oxygen above 19.5%, carbon dioxide below 0.5%, carbon monoxide below 50 ppm, and an apparent-temperature of 95 degrees Fahrenheit;

8.6.5. Provide the ability to monitor carbon monoxide and oxygen inside and outside the shelter/chamber;

8.6.6. Provide a means for entry and exit that maintains the integrity of the internal atmosphere;

8.6.7. Provide a means for MSHA certified intrinsically safe power if power required;

8.6.8. Provide a minimum 8 quarts of water per miner;

8.6.9. Provide a minimum of 4,000 calories of food per miner;

8.6.10. Provide a means for disposal of human waste to the outside of the shelter/chamber;

8.6.11. Provide a first aid kit as defined at W. Va. Code §22A-2-59(3)(b) independent of the section first aid kit required by W. Va. Code §22A-2-59(3) and 2-60(f);

8.6.12. Have provisions for inspection of the shelter/chamber and contents;

8.6.13. Contain manufacturer recommended repair materials;

8.6.14. Provide a battery-powered occupant-activated strobe light of a model approved by the Director that is visible from the outside indicating occupancy;

8.6.15. Provide provisions for communications to the surface; and

8.6.16. Provide proof of current approval for all items and materials subject to MSHA approval.

8.7. No later than April 15, 2007 all underground mine operators shall submit an emergency shelter/chamber plan for approval by the Director in accordance with W. Va. Code §22A-1-36. The design, development, submission, and implementation of the shelter/chamber plan shall be the responsibility of the operator of each mine.

8.8. Within 30 calendar days after submission of the emergency shelter/chamber plan, the Director shall either approve the emergency shelter/chamber plan or shall reject and return the plan to the operator for modification and resubmission, stating in detail the reason for such rejection. If the plan is rejected, the Director shall give the operator a reasonable length of time, not to exceed 15 calendar days, to modify and resubmit such plan.

8.9. Within 15 days of approval of the emergency shelter/chamber plan by the Director, the underground mine operator shall submit as an addendum to its emergency shelter/chamber plan a copy of any contract, or purchase order, or other proof of purchase of any equipment required to complete the emergency shelter/chamber and for installation and ongoing maintenance

8.10. The operator shall submit certified progress reports no less frequently than every 60 calendar days until full compliance is achieved.

8.11. After the Director has approved an operator's emergency shelter/chamber plan, the operator shall submit revisions to the emergency shelter/chamber plan at any time that changes in operational conditions result in substantive modification. In addition, at any time after approval, the operator may submit proposed modifications or revisions to its plan along with reasons therefor to the Director. Within 30 days after receipt by the Director of any proposed revisions or modifications to the emergency shelter/chamber plan, the Director shall either approve or reject the revisions, stating in detail the reasons for such rejection.

8.12. In developing the emergency shelter/chamber plan and any revisions, the operator shall take into consideration the physical features of the particular mine, emergency plans, advances in emergency shelter/chamber technologies and any other aspect of the particular mine the operator deems relevant to the development of the emergency shelter/chamber plan.

8.13. A copy of the approved emergency shelter/chamber plan shall be provided to the mine rescue teams providing coverage for the mine and included in the mine rescue program required by W. Va. Code §22A-1-35(q). Copies of the most recent version shall be available at the mine for emergency responders. As changes are made to the approved emergency shelter/chamber plan, updated versions shall be submitted to the above parties.

8.14. The proposed emergency shelter/chamber plan shall:

8.14.1. Describe the structure and operations of the emergency shelter/chamber, the surveyed location of the shelter and any necessary survey monuments for locating emergency drilling operations to the shelter/chamber and the shelter/chamber's role in emergency response;

8.14.2. Ensure that proper emergency shelter/chamber use is included in initial mine hazard training in such a manner that it is in compliance with all manufacturers' requirements and is provided yearly in addition to annual refresher training. All training shall be recorded and made available upon request;

8.14.3. Ensure weekly inspections of emergency shelters/chambers and contents shall be conducted by a certified mine foreman and/or mine examiner and recorded in weekly ventilation examination book;

8.14.4. Ensure that weekly safety meetings review the current location of applicable emergency shelters/chambers and results of the latest inspection;

8.14.5. Ensure that all opening to emergency shelters/chambers shall be equipped with easily removable tamper-proof tags such that a visual indication of unauthorized access to the emergency shelter/chamber can be detected; and

8.14.6. Ensure that the mine's communication center shall monitor any communication systems associated with the emergency shelter/chamber at all times that the mine is occupied.

8.15. If the Director, in his/her sole discretion, determines that an operator has failed to provide an emergency shelter/chamber plan or progress report, has provided an inadequate emergency shelter/chamber plan or progress report, has failed to comply with its approved emergency shelter/chamber plan or compliance schedule, 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 W. Va. Code §22A-2-55 or this rule, the Director shall issue a cessation order to the operator for the affected mine.

8.16. If there are no emergency shelters/chambers approved by May 29, 2007, operators shall install in lieu of an emergency shelter/chamber, within 1,000 feet of the nearest working face in each working section, storage caches of SCSRs sufficient to provide each miner reasonably expected to be at the working section with no less than 16 additional SCSRs rated by MSHA each for a duration of 60 minutes or greater, or an equivalent amount of breathable air and barricading materials described at W. Va. Code §29A-2-58(n).

8.17. As provided in W. Va. Code §§22A-2-55(f)(3), 2-55(g)(2), and 2-55(h)(2), any person that, without the authorization of the operator or the Director, knowingly removes or attempts to remove emergency shelter/chamber or its contents approved by the Director from the mine or mine site with the intent to permanently deprive the operator of the device or knowingly tampers with or attempts to tamper with such a device shall be deemed guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than 1 year nor more than 10 years or fined not less than \$10,000 nor more than \$100,000, or both.

§56-4-9. Wireless Emergency Communication and Tracking/Locating systems.

9.1. The Director shall require, in each underground mine, an integrated communication and tracking/locating system maintained consistent with W. Va. Code R. §36-5-3.2 and a component of which shall be a communication center monitored at all times during which 1 or more miners are underground. A wireless emergency communication and tracking/locating device approved by the Director shall be worn by each miner underground and shall be provided by the operator.

9.2. As soon as practicable, the Director shall notify all operators of the wireless emergency communication and tracking/locating devices approved by the Director for use by each miner underground pursuant to W. Va. Code §22A-2-55.

9.3. The Director shall acquire, no later than July 1, 2006, the necessary technical/engineering support to evaluate the performance of individual communication/tracking devices and review the effectiveness of proposed communication/tracking plans.

9.4. The Director shall, no later than July 10, 2006, issue an open opportunity for emergency communication and tracking/locating providers to submit products for approval.

9.5. The Director shall require providers seeking approval to submit documentation certified by a licensed West Virginia professional engineer that: the product has been tested for functionality in West Virginia underground mines; that the product has been or is in the process of being approved as intrinsically safe by MSHA and other criteria as the Director determines; a description of the process used in making that determination; and a certification in the following form: "I, the undersigned, hereby certify that this product, to the best of my knowledge and belief, meets or exceeds all requirements set forth in W. Va. Code R. §56-4-9", that the product has been tested for functionality in West Virginia underground mines, that the product has been or is in the process of being approved as intrinsically safe by MSHA and other criteria as the Director determines.

9.6. No later than July 31, 2007 all underground mine operators shall submit a communication/tracking plan for approval by the Director in accordance with W. Va. Code §22A-1-36. The design, development, submission, and implementation of the communication/tracking plan shall be the responsibility of the operator of each mine.

9.7. Within 30 calendar days after submission of the communication/tracking plan, the Director shall either approve the communication/tracking plan, or shall reject and return the plan to the operator for modification and resubmission, stating in detail the reason for such rejection. If the plan is rejected, the Director shall give the operator a reasonable length of time, not to exceed 15 calendar days, to modify and resubmit such plan.

9.8. Within 15 days of approval by the Director, the underground mine operator shall submit as an addendum to its plan, a copy of any contract, or purchase order, or other proof of purchase of any equipment required to complete the communication/tracking system and for installation and ongoing maintenance.

9.9. The operator shall submit certified progress reports no less frequently than every 60 calendar days until full compliance is achieved.

9.10. If the Director, in his/her sole discretion, determines that an operator has failed to provide a communication/tracking plan or progress report, has provided an inadequate communication/tracking plan or progress report, has failed to comply with its approved communication/tracking plan or compliance schedule, 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 W. Va. Code §22A-2-55 or this rule, the Director shall issue a cessation order to the operator for the affected mine under W. Va. Code §22A-1-15.

9.11. In developing the communication/tracking plan and any revisions, the operator shall take into consideration the needs for emergency communications and tracking/locating resulting from accidents as described at W. Va. Code §22A-2-66(a), physical features of the particular mine, emergency plans, existing communication infrastructure, communications required under W. Va. Code §22A-1-35(k) and 2-42 and W. Va. Code R. §36-2-2 and 5-2, advances in communication/tracking technologies and any other aspect of the particular mine the operator deems relevant to the development of the communication/tracking plan.

9.12. The proposed communication/tracking plan shall describe the structure and operations of the separate or integrated communication/tracking system(s) and its role in emergency response specific to the mine shall be detailed and submitted to the Director and, once approved, to the mine rescue teams providing coverage with an updated mine rescue program pursuant to W. Va. Code §22A-1-35(q). Copies of the most recent version shall be available at the mine for emergency responders. As changes are made to the system, updated versions shall be submitted to the above.

9.13. The proposed communication/tracking system shall include the ability for:

9.13.1. A communication center monitored at all times during which 1 or more miners are underground.

9.13.1.a. This center shall be staffed by miners holding a valid underground miner's certificate, and trained and knowledgeable in the installed communications/ tracking systems, monitoring and warning devices, travel ways, and mine layout.

9.13.1.b. Individuals not possessing a valid underground miner's certificate but working full-time as a communication center operator on or before May 25, 2006 shall be allowed to continue as communications center operators at that mine provided they will have successfully completed no later than December 31, 2006 a certified 80 hour underground miners apprentice training program, as defined in W. Va. Code R. §48-2-2.7(a), renewed annually pursuant to W. Va. Code R. §48-2-2.8(a) and documentation is available for inspection consistent with W. Va. Code R. §36-24-5.

9.13.2. Knowing the location of all miners immediately prior to an event by tracking/locating device in the escape-ways, normal work assignments, or notification of the communication center.

9.13.3. Knowing the location of miners in the escape-ways after an event providing the tracking system is still functional.

9.13.4. Check-in and check-out with the communication center by miners prior to entrance and exit from bleeders and remote or seldom used areas of the mine (all times shall be logged).

9.13.5. Allowing 2-way communications coverage in at least 2 separate air courses and at least 1 of which shall be an intake.

9.13.6. Maintaining communication/tracking after loss of outside power and maintain function both inby and outby of the accident event site with suitable supply of equipment for rapid reconnection.

9.13.7. Maintain a surface supply of communication/ tracking devices for use by emergency rescue personnel.

9.13.8. Allow for communication to surface at all required emergency shelters/chambers.

9.13.9. All miners and likely emergency responders shall be trained in the use, limitations and interoperability of all components of the communication and tracking/locating system. This shall be incorporated into ongoing required training. All training shall be recorded and made available upon request.

9.14. The operator shall provide a schedule of compliance for the communication/tracking plan, which shall include:

9.14.1. A narrative description of how the operator will achieve compliance with above requirements;

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

9.14.3. A statement indicating when the implementation of the proposed plan will be complete.

9.15. The operator shall provide as attachments to its communication/tracking plan:

9.15.1. A statement of the analysis and evaluation required in developing its plan;

9.15.2. A statement indicating the initial training dates for implementation of the communication/tracking system and how the communication/tracking system will be incorporated in other required training;

9.15.3. A statement regarding how the communications/tracking system will be tested and maintained; and

9.15.4. The name of the person or persons representing the operator, including his or her title, mailing address, email address and telephone number, who can be contacted by the Director for all matters relating to the communication/tracking plan and weekly testing of the system.

9.16. After the Director has approved an operator's communication/tracking plan, the operator shall submit revisions to the communications plan at any time that changes in operational conditions result in a substantive modification in the communication/tracking system. In addition, at any time after approval, the operator may submit proposed modifications or revisions to its plan along with reasons therefor to the Director. Within 30 days after receipt by the Director of any proposed revisions or modifications to the communications/tracking plan, the Director shall either approve or reject the revisions, stating in detail the reasons for such rejection.

9.17. The Director may require modifications to a communication/tracking plan at any time following the investigation of a fatal accident or serious injury, as defined by W. Va. Code R. §36-19-3.2, if such modifications are warranted by the findings of the investigation.