

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

FILED
JUL 31 2 05 PM '97
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Division of Labor TITLE NUMBER: 42

CITE AUTHORITY WV Code 21-3A-6

AMENDMENT TO AN EXISTING RULE: YES NO

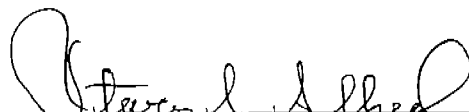
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 15

TITLE OF RULE BEING AMENDED: West Virginia Occupational Safety and
Health Act

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature

\$5.20

DATE: July 31, 1997

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Division of Labor

LEGISLATIVE RULE TITLE: West Virginia Occupational Safety and Health Act

1. Authorizing statute(s) citation WV Code 21-3A-6

2. a. Date filed in State Register with Notice of Hearing

June 25, 1997

b. What other notice, including advertising, did you give of the hearing?

Public Comment Period (only)

c. Date of Hearing(s) _____

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 31, 1997

f. Name and phone number(s) of agency person(s) to contact for additional information:

Andrew A Brown (304) 558-7890

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing: N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached None Received

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

FILED
JUN 25 2 48 PM '97
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: WV Division Of Labor TITLE NUMBER: 42

RULE TYPE: Legislative; CITE AUTHORITY WV Code 21-3A-6

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 15

TITLE OF RULE BEING AMENDED: WV Occupational Safety And Health Act

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

RECEIVED

JUN 25 1997

Legislative Rule Making
Review Committee

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 26, 1997 AT 4:30 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Attn: Chris Quasebarth

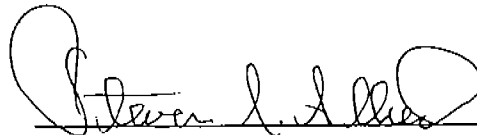
WV Division of Labor

Building #3, Room 319

1900 Washington Street, East

Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Facts and Circumstances

The West Virginia Occupational Safety and Health Act, WV Code §21-3A-1, became law on July 1, 1987. Due to the lack of funding, enforcement has been limited to response to complaints and accident investigations. This rule amendment is necessary to set administrative procedures relative to enforcement, education/training and research. The original legislative rule contained only the adoption of Federal OSHA standards.

It should be noted that this rule amendment is a complete re-write of the original rule. Therefore, strike-throughs and under-scores are not used in this amendment; the amendment is a complete replacement for the current rule (§42 CSR 15).

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: WV Occupational Safety And Health Act
 Type of Rule: Legislative Interpretive Procedural
 Agency WV Division of Labor
 Address Bldg. #3, Room #319
1900 Washington Street, East
Charleston, WV 25305

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ 0	\$ 0	\$ 29,192	\$ 30,965	\$ 32,800
PERSONAL SERVICES	0	0	25,013	26,265	27,700
CURRENT EXPENSE	0	0	3,129	3,500	3,700
REPAIRS & ALTERNATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	1,050	1,200	1,400

2. Explanation of above estimates: The above estimates reflect current expenditure levels with projections of 5% to 10% increases for future years.

3. Objectives of these rules: To set administrative procedures for the enforcement of the Act. NOTE: The former rule only adopted the Federal OSHA standards. This replacement rule incorporates the current Federal OSHA standards and sets administrative procedures. This rule completely replaces the current rule.

Rule Title: WV Occupational Safety And Health Act

4. Explanation of Overall Economic Impact of Proposed Rule.

- A. **Economic Impact on State Government.** Significant reductions in the rate of job-related injuries and illnesses are anticipated. This would result in savings in Workers' Compensation pay-outs, medical expenses, lost work time, productivity and pain and suffering.
- B. **Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.** Same as A above, if the entity elects coverage under Section 9 of the rule.
- C. **Economic Impact on Citizens/Public at Large.** Reduction in government spending (item A above).

Date:

June 25, 1997

Signature

of Agency Head or Authorized Representative

Steven L. Siller

SUMMARY

Section 1. This section provides the scope of the rule, the authority (West Virginia Code §21-3C) and provides for the filing and effective dates.

Section 2. Defines the application as the Act applies to only public employers, employees, and workplaces. Enforcement of the Act is vested with the West Virginia Division of Labor.

Section 3. This section provides definitions of terms used in the rule.

Section 4. (4.1) Updates the adopted standard to the current Federal Occupational Safety and Health Administration standards for workplace safety and health as contained in 29 CFR 1900-1999. (The former standard was the 1985 version).

(4.2) Reserved. This sub-section is reserved for special application standards or variance promulgated by the commissioner.

NOTE: Any additions, deletions or modifications to section four would require legislative review.

Section 5. This section provides for the duties of employers and employees.

Section 6. This section provides for the inspection/investigations procedures.

Section 7. This section provides for citation and appeal procedures.

Section 8. This section requires the Division of Labor to conduct research and provide safety and health training packages to employers and employees.

Section 9. This section provides the manner for county and local government entities to elect coverage under the Act.

42CSR15
TITLE 42
LEGISLATIVE RULE
DIVISION OF LABOR

SERIES 15
WEST VIRGINIA OCCUPATIONAL SAFETY AND HEALTH ACT

§42-15-1. General.

1.1. Scope. This legislative rule governs the workplace safety and health of employees, adopts federal and state standards, establishes recordkeeping and reporting requirements, provides for inspections and investigations, issuance of citations and penalties, establishes a complaint and appeal process, education and training, and provides for optional coverage.

1.2. Authority. W.Va. Code 21-3A-6.

1.3. Filing Date.

1.4. Effective Date.

§42-15-2. Application and Enforcement.

2.1. Application. This legislative rule governs all public employers, public employees and public workplaces within the state of West Virginia.

2.2. Enforcement. Enforcement of this legislative rule is vested with the West Virginia Division of Labor.

§42-15-3. Definitions.

3.1. "Act" means the West Virginia Occupational Safety and Health Act, W.Va. Code §21-3A-1, et seq.

3.2. "Commission" means the occupational safety and health review commission as established by W.Va. Code §21-3A-10.

3.3. "Commissioner" means the commissioner of the West Virginia Division of Labor or his/her designated representative.

3.4. "Division" means the West Virginia Division of Labor.

3.5. "Employee" or "employees" includes any person suffered or permitted to work by an employer.

3.6. "Employer" means public employer and shall include the state or any department, division, bureau, board, commission, council, agency or authority of the state, but shall not include the department of corrections, the department of health and the Legislature.

3.7. "Imminent danger" means any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedure.

3.8. "Person" means one or more individuals.

3.9. "Standard" means a standard for health or safety which requires the adoption or use of one or more practices, means, methods, operations or processes reasonably necessary or appropriate to provide safe and healthful employment in places of employment.

3.10. "Workplace" means a place where employees are assigned to work but shall not include any place inspected or regulated by the Federal Occupational Safety and Health Administration, the Federal Mine Safety and Health Administration, or facilities under the authority and occupied solely by the department of corrections, the department of health and the Legislature.

§42-15-4. Adoption of federal standards; additional state standards.

4.1 The code of federal regulations, 29 CFR §§ 1900-1999, setting forth all occupational safety and health standards as recognized by the United States Secretary of Labor under the authority of the Occupational Safety and Health Act of 1970, as in effect on the effective date of this rule, are hereby incorporated by reference as the state standards.

4.2 Additional state standards.

[RESERVED]

§42-15-5. Duties of employers and employees.

5.1. Each employer shall:

- (a) Furnish to each of his/her employees employment and a place of employment which are free from recognized hazards causing or likely to cause death or serious physical harm to his/her employees;

- (b) Comply with all safety and health standards as adopted by this rule;
- (c) Comply with all orders and directives issued by the commissioner;
- (d) Provide safety and health training to each employee with particularity to their respective work assignment. The employer may contract for training services, utilize training packages and services available from the division or may design and utilize his own individual training program: Provided, that all training programs utilized by an employer must receive prior approval from by the commissioner to insure that such programs fully comply with the provisions of this rule and W.Va. Code §21-3A;
- (e) Maintain records of occupational injuries and illnesses in accordance with the requirements of 29 CFR §§ 1900-1999; and
- (f) Notify the commissioner within eight (8) hours of its occurrence of:
 - i) any workplace fatality; ii) or any single accident which requires emergency room treatment or the hospitalization of three (3) or more employees.

5.2. Each employee shall:

- (a) Complete safety and health training as required by the employer or the commissioner;
- (b) Comply with all safety and health standards as adopted by the commissioner; and
- (c) upon recognition of any known safety and health hazard or other violation of the standards, immediately notify his/her employer. The employer shall keep a written record of the notification for a period not less than two (2) years.

5.3. No employer may discharge or in any manner discriminate against any employee because the employee filed any complaint, instituted or caused to be instituted or participated in any proceedings under or related to the Act or the provisions of this rule, testified or is about to testify in any such proceeding or has exercised on behalf of himself or others any right afforded by the Act or this rule.

§ 42-15-6. Inspections and investigations.

6.1. The commissioner shall perform inspections and investigations at any workplace or environment where work is performed by an employee of an employer. Each workplace shall be inspected in response to complaints filed, upon employer request and as the conditions may warrant.

6.2. Any employee or representative of employees who believes that there exists a violation of a standard or that there is an imminent danger of physical harm, may request an inspection.

(a) A request for inspection shall include:

- (1) Name of employee, employees or representative of employees making the request and shall include address and telephone number;
- (2) Set forth, with particularity, the grounds for the request, including the standard or standards believed to violated, if known;
- (3) Name and address of the employer;
- (4) Physical location of the alleged violation or violations;
- (5) Signature of the employee, employees or employee representative;
- (6) Date of the request; and
- (7) A statement by the person or persons making the request for inspection that a copy of the request has been provided to the employer and the date that such notice was given. Provided, However that upon the request of the person making the request for inspection, the name or names of the person or persons making the request shall not appear in the copy or on any record published, released or made available pursuant to subsection (g) of section eight, article three-A, chapter twenty-one [§21-3A-8(g)] of the W.Va. Code.

(b) If, upon receipt of the request for inspection, the commissioner determines there are reasonable grounds to believe that such violation or danger exists, the commissioner shall make inspection in accordance with the provisions of the act as soon as practicable to determine if the violation or danger exists.

(c) If, upon receipt of the request for inspection, the commissioner determines that there are no reasonable grounds to believe that the violation or danger exists, he shall notify the employer, employee or representative of employees in writing of the determination. Such notification does not preclude future enforcement action if conditions change or if additional facts become known.

- (d) Any person adversely affected by the actions of the commissioner upon a request for inspection is entitled to an appeal hearing before the commission in accordance with the provisions of section nine of this rule.

6.3. The commissioner or a designated representative, upon presentation of appropriate credentials, is authorized:

- (a) To enter at reasonable times any workplace or environment where work is performed by employees of an employer. No employer may refuse to allow the commissioner or designated representative to inspect a place of employment. If an employer attempts to obstruct an inspection, the commissioner may obtain an inspection warrant from the circuit court of Kanawha County or the circuit court of the county wherein the employer is located;
- (b) To inspect all physical facilities, structures, machines, apparatus, devices, equipment, vehicles and the materials contained therein and to observe practices, in use within the work environment, and to include a representative of the employer and a representative authorized by the employees in that inspection;
- (c) To openly inspect all records and reports required by the Act or the provisions of this rule to be kept or filed by the employer;
- (d) To privately interview or question any person employed by the employer; and
- (e) To require testimony of witnesses and the production of evidence under oath.

6.4. For every inspection and investigation conducted under authority of the Act, a written report shall be prepared. The report shall contain at a minimum the following:

- (a) Name and identification of the inspector or investigator;
- (b) Date of inspection or investigation;
- (c) Name and address of employer;
- (d) Physical location of inspection or investigation;
- (e) Names and titles of employer and employee representatives who participated in the inspection or investigation; and
- (f) Attached copies of all citations issued as a result of the inspection or investigation.

6.5 All reports of inspection and investigation are confidential until such time as all matters at issue contained in the report are resolved.

§ 42-15-7. Citations.

7.1. If, upon inspection or investigation, the commissioner or his designated representative determines that an employer or employee has violated any safety and health standard or variance therefrom, or finds a condition which poses, a recognized hazard likely to cause death, serious injury or illness, the commissioner shall issue a citation to the employer or employee.

- (a) The citation shall be in writing and delivered by personal service or certified mail.
- (b) The citation shall state with particularity the nature of the violation, including a reference to the provision of the Act, or the standard, rule or order alleged to have been violated. The citation shall fix a date by which the employer or employee shall have corrected the violation.
- (c) The citation shall contain a notification informing the employer or employee that he or she has fifteen (15) days from receipt of the citation to contest the citation or seek a variance. A request to contest a citation or to seek a variance shall be in writing, addressed to the commissioner. If the employer or employee fails to contest the citation or seek a variance, the citation, as proposed, becomes final and not subject to review by any court or agency.
- (d) If the employer or employee fails to contest the violation or seek a variance and fails to correct the violation by the correction date contained in the citation, the commissioner shall seek judicial enforcement to compel compliance.
- (e) If an employer or employee contests a citation or requests a variance, the commissioner shall immediately advise the commission, which will afford an opportunity for hearing.

7.2. Each citation issued under this section or a copy or copies thereof shall be prominently posted in a place accessible by all employees of the employer to include such places where employee notices are normally posted. In cases where there exists continued exposure to physical hazards, a copy of the citation shall be posted in the immediate physical area where the violation is alleged to have occurred.

§§ 42-15-8. Research; education and training programs.

8.1. The commissioner shall annually collect data from employer records of occupational injuries and illnesses. This data shall be used to analyze the performance of employers and employees and to evaluate the effectiveness of existing safety and health programs.

8.2. The commissioner may initiate such other research projects as deemed necessary to reduce the numbers and severity of occupational injuries and illness when abnormally high rates of occurrence are detected by the annual review or by on-site inspections.

8.3. The commissioner shall develop directly, or by grants or contract, basic occupational safety and health training courses with a level of diversity necessary to provide training specific to all work environments covered by this rule. These basic courses shall be designed suitable for all employees.

8.4. The commissioner shall develop directly, or by grants or contract, technical training courses designed to train and update management level personnel and those charged with occupational safety and health over-site responsibilities within a specific work environment. These technical courses shall provide a level of diversity necessary to meet the needs of any work environment covered by this rule.

8.5. The commissioner may require special training of employers and employees in work environments where research data indicates abnormally high occurrences of occupational injuries or illnesses or where unusual hazard exposure exists.

8.6. In the development of all training programs, the commissioner shall consult with and advise affected employers, employees and employee representatives as to the effective means of preventing occupational injuries and illnesses.

§ 42-15-9. Optional coverage by political subdivisions.

9.1 Any county or municipality or department, division bureau, board, council, agency or authority thereof or school district or special purposes district electing to be covered by the Act shall provide to the commissioner a true copy, with its seal attached, of the ordinance, resolution or other legal procedure followed explicitly electing coverage. The ordinance resolution or other legal procedure followed must specifically state that the body will enter into an agreement with the commissioner specifically identifying:

a) which workplace and/or group of employees are to be covered;

- b) that coverage will be for a period of not less than twelve months from the date of the agreement with the commissioner; and
- c) that the body agrees to abide by all training requirements, citations, directives or orders of the commissioner or commission which arise during the coverage period, even if they become final after the coverage period expires.