

Form #3

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SECRETARY OF STATE
STATE OF WEST VIRGINIA

Authorized Signature

SUMMARY OF RULE AND STATEMENT OF FACTS AND CIRCUMSTANCES

56 CSR § 3-1 *et seq.* has been in existence since 1991. Since that time many technological advances have occurred in the manner in which surface mining is conducted. This amendment is intended to modernize the Rules and Regulations pertaining to surface mining to account for those changes in technology. Also, many additional safety issues have arisen since 1991 and those safety issues have been addressed in this amendment. Additionally, two new sections of law have been added, one relating to highwall mining and the other relating to operating equipment on extreme slopes.

The Rule, as it currently exists, copies many sections of Chapter 22A of the West Virginia Code verbatim. Over the years, the statutes have changed, but the Rule has not. This has created several inconsistencies between the Rule and the Code. The Rule is now being amended to remove those verbatim quotations of the West Virginia Code, thus, removing those inconsistencies.

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 31, 2009

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV Office of Miners' Health Safety and Training
1615 Washington Street East
Charleston, WV 25311-2126

LEGISLATIVE RULE TITLE: ~~Title 56 Rules and Regulations Governing the Safety of~~
Those Employed in and Around Surface Mines in West Virginia

1. Authorizing statute(s) citation W Va Code 22A-1-6 and 22A-1-38

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 2, 2009

b. What other notice, including advertising, did you give of the hearing?
Posted on webpage; state register

c. Date of Public Hearing(s) *or* Public Comment Period ended:
Public Hearing: July 2, 2009 Public Comment Period ended: July 15, 2009

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

Attached X No comments received _____

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

July 31, 2009

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Ron Wooten, Director

WV Office of MHST

1615 Washington Street East

Charleston, WV 25311-2126

304-558-1425

304-558-4875 (fax)

rwooten@mines.state.wv.us or ronald.l.wooten@wv.gov (effective 8-5-09)

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

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 or comment period:

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 N/A

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules and Regulations Governing the Safety of Those Employed in and Around Surface Mines in West Virginia

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: Office of Miners' Health, Safety and Training

Address: 1615 Washington Street, East
Charleston, West Virginia 25311

Phone Number: (304) 558-1425 Email: rwooten@mines.state.wv.state

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The fiscal impact is unknown at this time and cannot be determined until fully implemented. Any increase in administrative costs will be minimal and will be absorbed without increasing employees or substantial increases in expenses.

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	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: Rules and Regulations Governing the Safety of Those Employed in and Around Surface Mines in West Virginia

Rule Title: Rules and Regulations Governing the Safety of Those Employed in and Around Surface Mines in West Virginia

- 3. Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

No increases or decreases in revenue at this time.

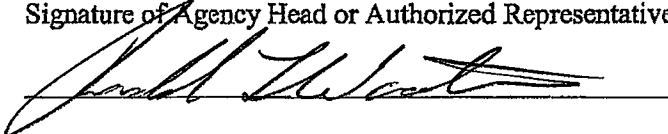
MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

None are anticipated.

Date: 6-2-09

Signature of Agency Head or Authorized Representative



PUBLIC HEARING
on
RULES AND REGULATIONS GOVERNING THE SAFETY OF THOSE
EMPLOYED IN AND AROUND SURFACE MINES IN WEST VIRGINIA

JULY 2, 2009

	NAME	AFFILIATION	MAILING ADDRESS
19.			
20.			
21.	<i>No Comments Were Offered at the Public Hearing</i>		
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STATE OF WEST VIRGINIA

TITLE 56
LEGISLATIVE RULES
OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING
SERIES 3
RULES AND REGULATIONS GOVERNING THE SAFETY OF
THOSE EMPLOYED IN AND AROUND SURFACE MINES IN WEST VIRGINIA

§56-3-1. General.

1.1. Scope. -- These rules govern safety of employees in and around mines.

1.2. Authority. -- W. Va. Code § ~~22-6-4~~ 22A-1-6 and 22A-1-38

1.3. Filing Date. -- June 2, 2009

1.4. Effective Date. -- _____

1.5. Applicability. -- These regulations shall extend to all surface mining operations. These regulations shall not apply to any utility or railroad having facilities in the vicinity of surface mining operations unless such utility or railroad is also the operator of such surface mining operations.

1.6. Other law applicable. -- All provisions of the mining law of this state, specifically Chapter 22A, Articles 2 1 and 2 of the West Virginia Code, are applicable to surface mining, except to the extent that these regulations cover the specific requirement, and except to the extent that the context of a specific provision would render its applicability totally inappropriate to surface mining.

§56-3-2. Effect of Law and Regulations.

2.1. These regulations shall have the effect of law and violations shall be deemed a violation of law and so cited with the same effect as law. All provisions of Article 1, Chapter 22A of the West Virginia Code ~~relative to enforcement~~ are applicable to ~~the enforcement~~ of these regulations.

§56-3-3. Definitions.

3.1. Surface Mine. -- The term "Surface Mine" shall mean all areas surface mined or being surface mined as well as adjacent areas ancillary to the operations, together with preparation and processing plants; storage areas and haulageways, roads, shops and trails; ~~which are covered by the provisions of Chapter 20, Article 6 of the Code and coal prospecting subject to Section 8, Article 6, Chapter 20 of the Code.~~ "Surface Mine" for the purpose of these regulations shall not mean the surface operations connected with an underground coal mine.

3.2. Department. -- The term "Department" shall mean the ~~state department of energy~~ Office of Miners' Health, Safety and Training provided for in Section 2 1, Article 1 of Chapter 22A of the

West Virginia Code.

3.3. Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training. -- The term "Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training" shall mean the Director of the ~~department of energy~~ Office of Miners' Health, Safety and Training provided for in Chapter 22A, Article 1, Section 3, of the West Virginia Code, ~~and is synonymous with the term "Chief of the Department of Energy"~~.

3.4. Inspector. -- The term "Inspector" shall mean surface mine inspector employed by the ~~Department of Energy~~ Office of Miners' Health, Safety and Training.

3.5. Mine Inspectors' Examining Board. -- The term "Mine Inspectors' Examining Board" shall mean the mine inspectors' examining board provided for in ~~Section 12~~ Article 9 of Chapter 22A of the West Virginia Code.

3.6. Board of Appeals. -- The term "Board of Appeals" shall mean the Board of Appeals as provided for in ~~Section 31~~ Article 5 of Chapter 22A of the West Virginia Code.

3.7. Agent. -- The term "Agent" means any person charged with the responsibility for the operations of all or a part of a surface mine or the supervision of the miners on a surface mine.

3.8. Operator. -- The term "Operator" shall mean any firm, corporation, partnership or individual operating any surface coal mine or part thereof, or engaged in the construction of any facility associated with a coal mine.

3.9. Surface Miner. -- The term "Surface Miner" shall mean any individual working on or around a surface mine. ~~who is employed by the operator. This definition does not include vendors, visitors, and other invitees of the coal operator who are not performing surface mine duties.~~

3.10. Person. -- The term "Person" shall mean any individual, partnership, association, corporation, firm, subsidiary of a corporation or other organization.

3.11. Superintendent. -- The term "Superintendent" shall mean the person who shall have, on behalf of the operator, immediate supervision of one (1) or more mines.

3.12. Mine Foreman. -- The term "Mine Foreman" shall mean the certified person whom the operator or superintendent shall place in charge of the workings of the surface mine and of the persons employed thereon.

3.13. Assistant Mine Foreman. -- The term "Assistant Mine Foreman" shall mean a certified person designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of the persons employed therein.

3.14. Supervisor. -- The term "Supervisor" shall mean a superintendent, mine foreman,

assistant mine foreman, or any person specifically designated by the superintendent or mine foreman to supervise work of employees and who is acting pursuant to such specific designation and instructions.

3.15. Interested Persons. -- The term "Interested Persons" shall include the operator, members of any mine safety committee at the mine affected and other duly authorized representative of the mine workers and ~~Department of Energy~~ the Office of Miners' Health, Safety and Training.

3.16. Certified Electrician. -- The term "Certified Electrician" shall mean any person who is qualified as a mine electrician and who has passed an examination given by the ~~Department of Energy~~ Office of Miners' Health, Safety and Training, or has at least three (3) years of experience in performing electrical work underground in a coal mine, in the surface work area of an underground coal mine, in a surface coal mine, in a non-coal mine, in the mine equipment manufacturing industry, or in any other industry using or manufacturing similar equipment, and has satisfactorily completed a coal mine electrical training program approved by the ~~Department of Energy~~ Office of Miners' Health, Safety and Training.

3.17. Certified Person. -- The term "Certified Person" when used to designate the kind of person to whom the performance of a duty in connection with the operation of a mine shall be assigned, shall mean a person who is qualified under the provisions of this law to perform such duty.

3.18. Accident. -- The term "Accident" shall mean any premature ignition, fire or injury, or death other than natural causes of any person.

3.19. Imminent Danger. -- The term "Imminent Danger" means the existence of any condition or practice on a surface mine which could be expected to cause death or serious physical harm before such condition or practice can be abated.

3.20. Qualified Person. -- The term "Qualified Person" shall mean a person who has completed an examination and is considered qualified on record by the ~~Department of Energy~~ Office of Miners' Health, Safety and Training.

3.21. Approved. -- The term "Approved" shall mean in strict compliance with mining law, or, in the absence of law, accepted by a recognized body or organization whose approval is generally recognized as authoritative on the subject.

3.22. Berm. -- The term "Berm" shall mean a pile or mound of material or equivalent capable of restraining a vehicle.

3.23. Work of Preparing the Coal. -- The term "Work of Preparing Coal" shall mean the breaking, crushing, sizing, cleaning, washing, drying, mixing, storing, loading, and removing of over-burden from the top of the coal for the purpose of extracting coal.

3.24. Active Underground Mine Working. -- The term "Active Underground Mine Working" shall mean all places in a mine that are ventilated and inspected regularly.

3.25. Abandoned Underground Mine Workings. -- The term "Abandoned Underground Mine Workings" shall mean excavation, either caved or sealed, that is deserted and in which further mining is not intended, or open workings which are ventilated and not inspected regularly.

3.26. Working Place. -- The term "Working Place" shall mean all areas in or about a surface mine where persons are working.

3.27. Detonator. -- The term "Detonator" shall mean electronic blasting caps, ~~electrical~~ electric blasting caps, and nonelectric delay blasting caps.

3.28. Nonelectric delay blasting caps. -- The term "Nonelectric Delay Blasting Caps" shall mean a blasting cap with an integral delay element in conjunction with and capable of being detonated by a detonation impulse ~~or signal from a miniaturized detonating cord~~ that does not require the use of electric energy to function.

3.29. Primer. -- The term "Primer" shall mean a cartridge or container of explosives into which a detonator or detonating cord is inserted or attached, and whose purpose is to initiate the main explosive charge.

3.30. Detonating cord. -- The term "Detonating Cord" shall mean a flexible cord containing a center core of high explosives to detonate other explosives with which it comes in contact.

3.31. Cast primer or booster. -- The term "Cast Primer or Booster" shall mean a case or pressed block or solid high explosives (i.e., not nitroglycerin sensitized) which is normally used to detonate insensitive or noncapsensitive explosives.

3.32. Safety fuse. -- The term "Safety Fuse" shall mean a flexible cord containing an internal burning medium by which fire or flame is conveyed at a continuous and uniform rate from the point of ignition to the point of use, usually a blasting cap.

3.33. Detonating cord millisecond delay connectors. -- The term "Detonating Cord Millisecond Delay Connectors" shall mean nonelectric shot interval (millisecond) delay devices for use in delaying blasts which are surface initiated by detonating cord.

3.34. Blasting agent. -- ~~Means any material consisting of a mixture of a fuel and oxidizer which:~~ The term "Blasting Agent" shall mean an explosive material which meets prescribed criteria for insensitivity to initiation.

~~(a) is used or intended for use in blasting;~~ For storage, Title 27, Code of Federal Regulations, Section 55.11 defines a blasting agent as any material or mixture, consisting of fuel and oxidizer intended for blasting, not otherwise defined as an explosive: provided, that the finished product, as mixed for use or shipment, cannot be detonated by means of a No. 8 test blasting cap (detonator) when unconfined (ATF Regulation).

~~(b) is not classified as an explosive by the Department of Transportation; For transportation, Title 49 CFR, Section 173.50, defines Class 1, Division 1.5 (blasting agent) as a substance which has mass explosion hazard but is so insensitive that there is very little probability of initiation or of transition from burning to detonation under normal conditions in transport.~~

~~(c) passes all United States DOT tests defining blasting agent, including insensitivity to a No. 8 blasting cap in accordance with CFR49, 173.114a.~~

3.35. Blasting area. -- The term "Blasting Area" shall mean the area near blasting operations in which concussion or flying material can reasonably be expected to cause injury. The blaster in charge shall determine the blasting area.

3.36. Explosives. -- The term "Explosives" shall mean any or all of the following, but is not limited to: water gel slurries, dynamites, permissibles, pellet powder, blasting caps, electric blasting caps, nonelectrical delay blasting caps, electronic computer chip blasting caps, cast primer and boosters, detonating cord, and detonating cord delay connections.

3.37. Electric blasting caps. -- The term "Electric Blasting Caps" shall mean instantaneous electric blasting caps and all types of delay electric blasting caps.

3.38. Armored cable. -- The term "Armored Cable" shall mean a cable provided with a wrapping of metal, usually steel wires or tapes, primarily for the purpose of mechanical protection.

3.39. Branch circuit. -- The term "Branch Circuit" shall mean any circuit, alternating current or direct current, connected to and leading from the main power lines.

3.40. Cable. -- The term "Cable" shall mean a standard conductor (single conductor cable) or a combination of conductors insulated from one another (multiple conductor cable).

3.41. Circuit breaker. -- The term "Circuit Breaker" shall mean a device for interrupting a circuit between separable contacts under normal or abnormal conditions.

3.42. Delta connected. -- The term "Delta Connected" shall mean a power system in which the windings or transformers or S.C. A.C. generators are connected to form a triangular phase relationship, and with phase conductors connected to each point of the triangle.

3.43. Effectively grounded. -- The term "Effectively Grounded" is an expression which means grounded through a grounding connection of sufficiently low impedance (inherent or intentionally added or both) so that fault grounds which may occur cannot build up voltages in excess of limits established for apparatus, circuits or systems so grounded.

3.44. Flame-resistant Cable, Portable. -- The term "Flame-resistant Cable, Portable" shall mean a portable flame-resistant cable that has passed the flame test of the Federal ~~Bureau of Mines~~. Mine Safety and Health Administration.

3.45. Ground or grounding conductor (mining). -- The term "Ground or Grounding Conductor (mining)", also referred to as a safety ground conductor, safety ground, and frame ground, shall mean a metallic conductor used to connect the metal frame, or enclosure or any equipment, device or wiring system with a mine track or other effective grounding medium.

3.46. Grounded (earthed). -- The term "Grounded (earthed)" shall mean that the system, circuit, or apparatus referred to is provided with a ground.

3.47. High voltage. -- The term "High Voltage" shall mean voltages of more than one thousand (1,000) volts.

3.48. Lightning Arrestor. -- The term "Lightning Arrestor" shall mean a protective device for limiting surge voltage on equipment by discharging or by passing surge current, it prevents continued flow or follow current to ground and is capable of repeating these functions as specified.

3.49. Low voltage. -- The term "Low Voltage" shall mean up to and including six hundred sixty (660) volts.

3.50. Medium voltage. -- The term "Medium Voltage" shall mean voltages from six hundred sixty-one (661) to one thousand (1,000) volts.

3.51. Mine Power Center or Distribution Center. -- The term "Mine Power Center or Distribution Center" shall mean a combined transformer or distribution unit, complete within a metal enclosure from which one (1) or more low-voltage power circuits are taken.

3.52. Neutral (derived). -- The term "Neutral (derived)" shall mean a neutral point or connection established by the addition of a "zigzag" or grounding transformer to a normally underground power system.

3.53. Neutral Point. -- The term "Neutral Point" shall mean the connection point of transformer or generator windings from which the voltage to ground is nominally zero (0), and is the point generally used for system groundings in wye-connected A.C. power system.

3.54. Portable (Trailing) Cable. -- The term "Portable (Trailing) Cable" shall mean a flexible cable or cord used for connecting mobile, portable or stationary equipment ~~in mines to a trolley system or other external~~ to a source of electrical energy where permanent ~~mine~~ wiring is prohibited or is impracticable.

3.55. Wye-Connected. -- The term "Wye-Connected" shall mean a power system connection in which one (1) end of each phase windings or transformers or A.C. generators are connected together to form a neutral point, and a neutral conductor may or may not be connected to the neutral point, and the neutral point may or may not be grounded.

3.56. ZigZag Transformer (Grounding Transformer). -- The term "Zigzag Transformer (Grounding Transformer)" shall mean a transformer intended primarily to provide a neutral point for

grounding purposes.

3.57. Brake systems:

(a) Service brake system - the primary brake system used for stopping a vehicle.

(b) Emergency stopping system - the system used for stopping a vehicle in the event of any single failure in the service brake system.

(c) Parking system - a system to hold a stopped vehicle in a stationary position.

3.58. Barricaded. -- The term "Barricaded" shall mean to obstruct passage of person, vehicles, or flying materials.

3.59. Blast Controller. -- The term "Blast Controller" shall mean a firing device for electronic detonator circuits which may have functions (such as programming, communication, circuit diagnostics, etc.) in addition to charging and transmission of the firing command.

3.60. Blast Site. -- The term "Blast Site" shall mean the area where explosive material is handled during loading of blast holes, including fifty (50) feet in all directions from the perimeter formed by loaded holes.

3.61. Blasting Accessories. -- The term "Blasting Accessories" shall mean non-explosive devices and materials used in blasting, such as, but not limited to, cap crimpers, tamping bags, blasting machines, blasting galvanometers, and cartridge punches.

3.62. Case Insert. -- The term "Case Insert" shall mean a set of printed, precautionary instructions, including the IME "Instructions and Warnings" which is included in a case of explosive materials.

3.63. Electrical Storm. -- The term "Electrical Storm" shall mean an atmospheric disturbance characterized by intense electrical activity producing lightning strikes and strong electric and magnetic fields. Synonymous with a thunderstorm and a lightning storm.

3.64. Electronic Detonator. -- The term "Electronic Detonator" shall mean a detonator that utilizes stored electrical energy as a means of powering an electronic timing delay element/module and that provides initiation energy for firing the base charge.

3.65. Extraneous Electricity. -- The term "Extraneous Electricity" shall mean electrical energy, other than actual firing current or the test current from a blasting galvanometer, that is present at a blast site and that could enter an electric blasting circuit. It includes stray current, static electricity, RF (electromagnetic) waves and time varying electric and magnetic fields.

3.66. Firing/Blasting Device. -- The term "Firing Device" or "Blasting Device" shall mean a device capable of charging and transmitting a fire command to an electronic detonator circuit. Also,

a device capable of detonating an electric or nonelectric detonator.

3.67. Misfire. – The term “Misfire” shall mean a blast or specific borehole that failed to detonate as planned. Also, the explosive materials that failed to detonate as planned.

3.68. Barrier. – The term “Barrier” shall mean any material objects that separate, keep apart or demarcate in a conspicuous manner when used in conjunction with warning signs.

3.69. Borehole. – The term “Borehole” shall mean a hole drilled in the material to be blasted, for the purpose of containing an explosive charge, also called Blasthole or Drillhole.

3.70. Downline. – The term “Downline” shall mean the line extending down the borehole used to carry energy to the detonating cap.

3.71. Emulsion. – The term “Emulsion” shall mean an explosive material containing substantial amounts of oxidizer dissolved in water droplets, surrounded by an immiscible fuel, or droplets of an immiscible fuel surrounded by water containing substantial amounts of oxidizer.

3.72. Firing/Lead line. – The term “Firing/Lead Line” shall mean the wires connecting electric or electronic blasting circuit(s) to the electrical power source/blast controller. In cases of non electrical initiation systems, the line that connects the blasting circuit(s) to the blasting initiating device.

3.73. Hot Holes. – The term “Hot Holes” shall mean boreholes drilled in the overburden overlaying a burning coal seam which increases the temperature of the boreholes.

3.74. Institute of Makers of Explosives (IME). – The term “Institute of Makers of Explosives (IME)” shall mean a non-profit safety-oriented trade association representing producers of commercial explosive materials in the United States and Canada and dedicated to safety in the manufacture, transportation, storage, handling and use of explosive materials.

3.75. Loaded Hole. – The term “Loaded Hole” shall mean a borehole containing explosive material(s).

3.76. Loading. – The term “Loading” shall mean placing explosive material in a borehole or against material to be blasted.

3.77. Overburden. – The term “Overburden” shall mean material of any nature lying on top of a deposit of coal which is to be mined.

3.78. Radio Frequency Energy. – The term “Radio Frequency Energy” shall mean the energy radiated as electromagnetic waves in the radio frequency spectrum.

3.79. Radio Frequency Transmitter. – The term “Radio Frequency Transmitter” shall mean an electronic transmitting device which radiates radio frequency waves. The transmitting device may be fixed (stationary) or mobile, and includes car telephones, citizens band radios, AM and FM radio

transmitters, television transmitters and radar transmitters.

3.80. Shot or Round. – The term “Shot or Round” shall mean a group of loaded boreholes fired, or intended to be fired in a continuous sequence with the application of initiating energy.

3.81. Shock Tube. – The term “Shock Tube” shall mean a small diameter plastic tube used for initiating detonators. It contains only a limited amount of reactive material so that the energy that is transmitted through the tube by means of a detonation wave is guided through and confined within the walls of the tube.

3.82. Slurry. – The term “Slurry” shall mean an explosive material containing substantial portions of a liquid, oxidizers and fuel, plus a thickener.

3.83. Static Electricity. – The term “Static Electricity” shall mean electric charge at rest on a person or object. It is most often produced by the contact and separation of dissimilar insulating materials.

3.84. Stray Current. – The term “Stray Current” shall mean a flow of electricity outside an insulated conductor system.

3.85. Wet Holes. – The term “Wet Holes” shall mean boreholes that contain water.

3.86. Extreme slope. -- The term “Extreme Slope” shall mean an extreme slope is any slope greater than a 2:1 slope.

3.87. Competent person. -- The term “Competent Person” shall mean a person designated by the mine operator or independent contractor who has a minimum of twenty-four (24) months experience at a surface mine and is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

3.88. Approved Detector. – The term “Approved Detector” shall mean any detector, approved by MSHA, to test for methane gas, oxygen deficiency, or other harmful gases.

3.89. Adequate – The term “Adequate” shall mean sufficient for a specific requirement.

3.90. Temporary Splice. – The term “Temporary Splice” shall mean a splice that is mechanically strong, flexible, provides adequate electrical conductivity, and is effectively insulated and sealed so as to exclude moisture. A temporary splice is not required to be “vulcanized” or fitted with a permanent, approved outer jacket.

3.91. Tension Crack. – The term “Tension Crack” shall mean a crack resulting from movement of material that may signal failure of the stability of the material.

3.92. High Pressure. -- The term "High Pressure" shall mean pressure of one hundred (100) p.s.i. or more.

§56-3-4. Applicability and Enforcement of Laws Safeguarding Life and Property; Regulations; Authority of Department of Energy Office of Miners' Health, Safety and Training Regarding Safety Laws.

4.1. All provisions of the mining laws of this state intended to safeguard life and property shall extend to all surface mining operations insofar as such laws are applicable thereto. The ~~d~~Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training shall promulgate reasonable regulations in accordance with the provisions of Chapter 29A of this code to protect the safety of those employed in and around surface mines. The enforcement of all laws and regulations relating to the safety of those employed in and around surface mines is hereby vested in the ~~Department of Energy~~ Office of Miners' Health, Safety and Training and shall be enforced according to the provisions of Chapter 22A of the West Virginia Code.

§56-3-5. Director of the Department of Energy Office of Miners' Health, Safety and Training - Appointment; Term of Office.

5.1. There shall be a Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training, who shall be appointed by the Governor with the advice and consent of the Senate and who shall serve for a term of four (4) years, subject to the provisions of Chapter 6 22A, Article 6 1, Section 4(6-6-4) 3 of the West Virginia Code, as amended. ~~The original term of the director of the Department of Energy appointed under Chapter 22 of the West Virginia Code shall commence as of the effective date of this article (July 1, 1971), and all appointments to such office made thereafter shall be made for a full term of four (4) years, except that in case of a vacancy, the appointment shall be made for the unexpired term only.~~

§56-3-6. Director of the Department of Energy Office of Miners' Health, Safety and Training - Powers and Duties.

6.1 The ~~d~~Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training shall have full charge of the ~~department~~ Office of Miners' Health, Safety and Training. He shall have the powers and ~~duty~~ duties as set forth in Section 4, Article 1, Chapter 22A of the West Virginia Code:

6.1. ~~Supervise and direct the execution and enforcement of the provisions of Chapter 20 and 22 of the West Virginia Code.~~

6.2. ~~Appoint a deputy director of the Department of Energy, fix his compensation and prescribe his powers and duties.~~

6.3. ~~Employ such assistants, clerks, stenographers and other employees as may be necessary to fully and effectively carry out the provisions of this law and fix their compensation, except as otherwise provided in Article 1, Chapter 22 of the West Virginia Code.~~

6.4. ~~Employ mine inspectors, and assign them to divisions or districts in accordance with the provisions of Chapter 22, Article 1, Section 7 of the West Virginia Code as may be necessary to fully and effectively carry out the provisions of this law, including the hiring and training of inspectors for the specialized requirements of surface mining, shaft and slope sinking, and surface installations and to supervise and direct such mine inspectors in the performance of their duties.~~

6.5. ~~Suspend, for good cause, any mine inspector without compensation for a period not exceeding thirty (30) days in any calendar year.~~

6.6. ~~Prepare report forms to be used by mine inspectors in making their findings, orders and notices, upon inspections made in accordance with Chapter 22 of the West Virginia Code.~~

6.7. ~~Hear and determine applications made by mine operators for the annulment or revision of orders made by mine inspectors, and to make inspections of mines, in accordance with the provisions of Article 1, Chapter 22 of the West Virginia Code.~~

6.8. ~~Cause a properly indexed permanent and public record to be kept of all inspections made by himself or by mine inspectors.~~

6.9. ~~Make annually a full and complete written report of the administration of his department to the Governor and the Legislature of the state for the year ending the thirteenth day of June. Such report shall include the number of visits and inspections of mines in the state by mine inspectors, the quantity of coal, coke and other minerals (including oil and gas) produced in the state, the number of men employed, number of mines in operation, statistics with regard to health and safety of persons working in the mines including the causes of injuries and deaths, improvements made, prosecutions, the total funds of the department from all sources identifying each source of such funds, the expenditures of the department, the surplus or deficit of the department at the beginning and end of the year, the amount of fines collected, the amount of fines imposed, the value of fines pending, the number and type of violations found, the amount of fines imposed, levied and turned over for collection, the total amount of fines levied but not paid during the prior year, the titles and salaries of all inspectors and other officials of the department, the number of inspections made by each inspector, the number and type of violations found by each inspector: **Provided,** That no inspector shall be identified by name in this report. Such reports shall be filed with the Governor and the Legislature on or before the thirty-first day of December of the same year for which it was made, and shall upon proper authority be printed and distributed to interested persons.~~

6.10. ~~Call or subpoena witnesses, for the purpose of conducting hearings into mine fires, mine explosions or any mine accident; to administer oaths and to require production of any books, papers, records, or other documents relevant or material to the hearing. Any witness so called or subpoenaed shall receive forty dollars (\$40) per diem and shall receive mileage at the rate of fifteen cents (15¢) for each mile actually traveled, which shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by such witness.~~

6.11. ~~Institute civil actions for relief, including permanent or temporary injunctions, restraining~~

orders, or any other appropriate action in the appropriate federal or state court whenever any operator or his agent violates or fails or refuses to comply with any lawful order, notice or decision issued by the director or his representative.

~~6.12. Perform all other duties which are expressly imposed upon him by the provisions of Chapter 22 of the West Virginia Code.~~

~~6.13. Make all records of the department open for inspections of interested persons and the public.~~

~~6.14. In conjunction with the director of the Department of Natural Resources, adopt programs, regulations and procedures designed to assist the small coal operator with obtaining permits and meeting the environmental protection performance standards for strip and underground coal mining operations with the State. For the purpose of this subdivision, a small coal operator is one who anticipated to mine less than two hundred thousand (200,000) tons per year, but the department in determining tonnage shall consider wholly owned subsidiaries to be the same operation as the parent corporation.~~

~~§56-3-7. Director of the Department of Energy Office of Miners' Health, Safety and Training; Eligibility; Salary.~~

~~7.1. The director of the Department of Energy shall be a male citizen of West Virginia, shall be competent person of good repute and temperate habits and shall have had at least fifteen (15) years experience underground in coal mines, at least ten (10) of which shall have been underground in mines in this state. He shall possess a practical knowledge of the different systems of working, ventilating and draining of coal mines, and a practical and scientific knowledge of all noxious and dangerous gases found in such mines. A diploma in mining engineering from the West Virginia University school of mines or any similarly accredited engineering school shall be counted as two (2) years working experience. The director shall devote all of his time to the duties of his office and shall not be directly or indirectly interested financially in any mine in this state. The salary of the director of the Department of Energy shall be twenty five thousand dollars (\$25,000) per year and traveling expenses, which shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by the director of the Department of Energy.~~

~~§56-3-8. Director of the Department of Energy; Oath and Bond.~~

~~8.1. The director of the Department of Energy shall, before entering upon the discharge of his duties, take the oath of office prescribed by Section 5, Article 4 of the constitution, and shall execute a bond in the penalty of two thousand dollars (\$2,000), which security to be approved by the Governor, conditioned upon the faithful discharge of his duties, a certificate of which oath and which bond shall be filed in the office of the secretary of state.~~

~~§56-3-9. Mine Inspectors May Be Appointed to Fill Vacancy in Department; Permanent Tenure Benefits not Affected.~~

9.1. Notwithstanding any other provisions of law, if vacancy occurs in any appointive position within the Department of Energy, any mine inspector having permanent tenure, if qualified, may be appointed to such appointive position without forfeiting any of the benefits which have accrued to him because of his permanent tenure as a mine inspector.

~~§56-3-10. Eligibility for Appointment as Surface Mine Inspector; Qualifications; Salary and Expenses; Removal.~~

~~10.1. In order to qualify for an appointment as a surface mine inspector, an eligible applicant shall have had at least five (5) years practical experience in surface mines, at least one (1) year of which, immediately preceding his original appointment, shall have been in surface mines in this state, and submit to a written and oral examination given by the mine inspectors' examining board. The examination shall relate to the duties to be performed by a surface mine inspector and may, subject to the approval of the mine inspectors' examining board, be prepared by the director of the West Virginia Department of Energy.~~

~~If the board finds after investigation and examination that the applicant (1) is eligible for appointment, and (2) has passed all oral and written examinations with a grade of at least eighty percent (80%), the board shall add such applicant's name and grade to register of qualified eligible candidates and certify its action to the director of the Department of Energy. The director may then appoint one (1) of the candidates from the three (3) having the highest grades.~~

~~All such appointees shall be citizens of West Virginia, in good health, not less than twenty-five (25) years of age, of good character and reputation, and temperate in habits. No person shall be eligible for permanent appointment as a surface mine inspector until he has served in a probationary status for a period of one (1) year to the satisfaction of the director of the department of energy.~~

~~Surface mine inspectors serving as such on the effective date of this section (July 1, 1977) may continue to serve for a probationary period not exceeding one (1) year and if eligible as prescribed by this section, may qualify for appointment during such probationary period in accordance with the provisions of this section.~~

~~However, surface mine inspectors employed on the effective date of this section (July 1, 1977) and who have served to the satisfaction of the Director of the Department of Energy for a period of two (2) years or more may continue to serve on a permanent tenure basis. In the performance of duties devolving upon surface mine inspectors, they shall be responsible to the inspector-at-large of the Department of Energy of their respective division.~~

~~The salary of the surface mine inspector supervisor shall be not less than seventeen thousand dollars (\$17,000) per year. Salaries of surface mine inspectors shall be not less than twelve thousand nine hundred dollars (\$12,900) per year during the first year of probationary service. After serving for a probationary period of one (1) year, the salary of a surface mine inspector shall be not less than fifteen thousand dollars (\$15,000) per year. In the discharge of their official duties in privately owned vehicles, surface mine inspectors and the surface mine inspector supervisor shall receive mileage at the rate of not less than fifteen cents (15¢) per mile. A surface mine inspector, after having~~

~~received a permanent appointment, shall be removed from office only for physical or mental impairment, incompetency, neglect of duty, drunkenness, malfeasance in office, or other good cause.~~

~~§56-3-11. Mine Inspectors' Examining Board.~~

~~11.1. There shall be a mine inspectors' examining board consisting of five (5) members who, except for the public representative of such board, shall be appointed by the Governor, by and with the advice and consent of the Senate. Members so appointed may be removed only for the same caused and in like manner as elective state officers. One of the members of the board shall be a representative of the public, who shall be the director of the school of mines at West Virginia University. Two (2) members of the board shall be persons who by reason of previous training and experience may reasonably be said to represent the viewpoint of coal mine operators and two (2) members shall be persons who by reason of previous training and experience may reasonably be said to represent the viewpoint of coal mine workers.~~

~~The Director of the Department of Energy shall be an ex-officio member of the board and shall serve as secretary of the board, without additional compensation; but he shall have no right to vote with respect to any matter before the board.~~

~~The members of the board except the public representative, shall be appointed for overlapping terms of eight years, except that the original appointments shall be for terms of two (2), four (4), six (6) and eight (8) years, respectively. Any member whose term expires may be reappointed by the governor.~~

~~Each member of the board shall receive fifty dollars (\$50) per diem while actually engaged in the performance of the work of the board, and shall receive mileage at the rate of 10 cents (10) for each mile actually traveled going from the home of the member to the place of the meeting of the board and returning therefrom, which shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by such members of the board.~~

~~The public member shall serve as chairman of the board. Members of the board before performing any duty, shall take and subscribe to the oath required by Article 4, Section 5 of the constitution of West Virginia.~~

~~The mine inspectors' examining board shall meet at such times and places as shall be designated by the chairman. It shall be the duty of the chairman to call a meeting of the board on the written request of three (3) members or the Director of the Department of Energy. Notice of each meeting shall be given in writing to each member by the secretary at least five (5) days in advance of the meeting. Three (3) members shall constitute a quorum for the transaction of business.~~

~~In addition to other duties expressly set forth elsewhere in this article, the board shall:~~

~~(1) Establish, and from time to time revise, forms of application for employment as mine inspectors and forms for written examinations to test the qualification of candidates for the position;~~

~~(2) Adopt and promulgate reasonable rules and regulations relating to the examination, qualification and certification of candidates for appointment as mine inspectors, and hearings for removal of inspectors, required to be held under Chapter 22, Article 1. All of such rules and regulations shall be printed and a copy thereof furnished by the secretary of the board to any person upon request;~~

~~(3) Conduct after public notice of the time and place thereof, examinations of candidates for appointment as mine inspector. By unanimous agreement of all members of the board, one (1) or more members of the board or an employee of the Department of Energy may be designated to give a candidate the written portion of the examination.~~

~~(4) Prepare and certify to the Director of the Department of Energy a register of qualified eligible candidates for appointment as mine inspectors. The register shall list all qualified eligible candidates in the order of their grades, the candidates with the highest grade appearing at the top of the list. After each meeting of the board held to examine such candidates, and at least annually, the board shall prepare and submit to the director of the Department of Energy a revised and corrected register of qualified eligible candidates for appointment as mine inspector, deleting from such revised register all persons (a) who are no longer residents of West Virginia, (b) who have allowed a calendar year to expire without, in writing indicating their continued availability for such appointment, (c) who have passed over for appointment for three (3) years, (d) who have become ineligible for appointment since the board originally certified that such person was qualified and eligible for appointment as mine inspector, or (e) who, in the judgment of at least four (4) members of the board, should be removed from the register for good cause.~~

~~(5) Cause the secretary of the board to keep and preserve the written examination papers, manuscripts, grading sheets, and other papers of all applicants for appointment as mine inspector for such period of time as may be established by the board. Specimens of the examinations given, together with the correct solution of each question, shall be preserved permanently by the secretary of the board;~~

~~(6) Issue a letter or written notice of qualifications to each successful eligible candidate;~~

~~(7) Hear and determine proceedings for the removal of mine inspectors in accordance with the provisions of Chapter 22, Article 1;~~

~~(8) Hear and determine appeals of mine inspectors from suspension orders made by the director pursuant to the provisions of Chapter 22, Article 2, Section 4: **Provided,** That an aggrieved inspector, in order to appeal from any order or suspension, shall file such appeal in writing with the mine inspectors' examining board not later than ten (10) days after receipt of notice of suspension. On such appeal the board shall affirm the act of the director unless it be satisfied from a clear preponderance of the evidence that the director has acted arbitrarily;~~

~~(9) Make an annual report to the governor and the director of the department of mines concerning the administration of mine inspection personnel in the state service, making such recommendations as the board considers to be in the public interest.~~

~~§56-3-12. Director and Inspectors Authorized to Enter Mines; Duties of Inspectors to Examine Mines; No Advance Notice; Reports After Fatal Accidents.~~

~~12.1. The Director of the Department of Energy shall have authority to visit, enter, and examine any mine, whether underground or surface and may call for the assistance of any district mine inspector or inspectors whenever such assistance is necessary in the examination of any mine. The operator of every coal mine shall furnish the director of the Department of Energy or mine inspector proper facilities for entering such mine and making examination or obtaining information.~~

~~If miners at any mine or one of their authorized representatives have reason to believe that dangerous conditions are existing or that the law is not being complied with, they may request the director to have an immediate investigation made.~~

~~Mine inspectors shall devote their full time and undivided attention to the performance of their duties, and they shall examine all of the mines in the respective districts and as often, in addition thereto, as the Director of the Department of Energy may direct, or the necessities of the case or the condition of the mine or mines may require, with no advance notice of inspection provided to any person, and they shall make a personal examination of each surface mine operation for the purpose of determining whether a danger, described in Chapter 22, Article 1, Section 14 of the West Virginia Code exists in any such mine, or whether any provisions of article two of this chapter is being violated or has been violated within the past forty-eight (48) hours in any such mine.~~

~~In addition to the other duties imposed by these rules and regulations, it shall be the duty of each inspector to note each violation he finds and issue a finding order or notice, as appropriate for each violation so noted. During the investigation of any accident, any violation may be noted whether or not the inspector actually observes the violation and whether or not the violation exists at the time the inspector notes the violation, so long as the inspector has clear and convincing evidence the violation has occurred or is occurring.~~

~~The mine inspector shall visit the scene of each fatal accident occurring in any mine within his district and shall make an examination into the particular facts of such accident; make a report to the Director of the Department of Energy, setting forth the results of such examination, including the condition of the mine and the cause or causes of such fatal accident, if known, and all such reports shall be made available to the interested parties, upon written requests.~~

~~At the commencement of any inspection of a coal mine by an authorized representative of the director, the authorized representative of the miners at the mine at the time of such inspection shall be given an opportunity to accompany the authorized representative of the director on such inspection.~~

~~§56-3-13. Findings Orders and Notices.~~

~~13.1.~~

(a) ~~If upon any inspection of a coal mine, an authorized representative of the director finds that an imminent danger exists such representative shall determine the area throughout which such danger exists, and thereupon shall issue forthwith an order requiring the operator of the mine or his agent to cause immediately all persons, except those referred to in subdivisions (1), (2), (3) and (4), subsection (c) of this section, to be withdrawn from and to be prohibited from entering such area until an authorized representative of the director determines that such imminent danger no longer exists.~~

~~All employees on the inside and outside of a mine who are idle as a result of the posting of a withdrawal order by a mine inspector shall be compensated by the operator at their regular rates of pay for the period they are idled, but not more than the balance of such shift. If such order is not terminated prior to the next working shift, all such employees on that shift who are idled by such order shall be entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than four (4) hours of such shift.~~

(b) ~~If, upon any inspection of a coal mine, an authorized representative of the director finds that there has been a violation of law, but the violation has not created an imminent danger, he shall issue a notice to the operator or his agent, fixing a reasonable time for the abatement of the violation. If, upon the expiration of the period of time, as originally fixed or subsequently extended, an authorized representative of the director of the Department of Energy finds that the violation has not been totally abated, and if he also finds that the period of time should not be further extended, he shall find the extent of the area affected by the violation and shall promptly issue an order requiring the operator of such mine or his agent to cause immediately all persons, except those referred to in subdivisions (1), (2), (3), (4), subsection (c) of this section, to be withdrawn from, and to be prohibited from entering such area until an authorized representative of the director determines that the violation has been abated.~~

(c) ~~The following persons shall not be required to be withdrawn from or prohibited from entering any area of the coal mine subject to an order issued under this section:~~

~~(1) Any person whose presence in such area is necessary, in the judgement of the operator or an authorized representative of the director, to eliminate the condition described in the order;~~

~~(2) Any public official whose official duties require him to enter such area;~~

~~(3) Any representative of the miners in such mine who is, in the judgment of the operator or an authorized representative of the director, qualified to make coal mine examinations or who is accompanied by such person and whose presence in such area is necessary for the investigation of the conditions described in the order; and~~

~~(4) Any consultant to any of the foregoing.~~

~~13.2. Notices and orders issued pursuant to these regulations shall contain a detailed description of the conditions or practices which cause and constitute an imminent danger or a violation of any mandatory health and safety standard and, where appropriate, a description of the area of the coal~~

mine from which persons must be withdrawn and prohibited from entering.

13.3. Each notice or order issued under these regulations shall be given promptly to the operator of the coal mine or his agent by an authorized representative of the director issuing such notice or order, and all such notices and orders shall be in writing and shall be signed by such representative and posted on the bulletin board at the mine.

13.4. A notice or order issued pursuant to these regulations may be modified or terminated by an authorized representative of the director.

~~§56-3-14. Review of Orders and Notices by the Director.~~

14.1. An operator, issued an order pursuant to the provisions of Chapter 22, Article 1, Section 14 of the West Virginia Code, or any representative of miners in any mine affected by such order or by any modification or termination of such order, may apply to the director for review of the order within thirty (30) days of receipt thereof or within thirty (30) days of its modification or termination. ~~An operator, issued a notice pursuant to Chapter 22, Article 1, Section 14, subsection (b) of the West Virginia Code or any representative of miners in any mine affected by such notice, may, if he believes that the period of time fixed in such notice for the abatement of the violation is unreasonable, apply to the director for review of the notice within thirty (30) days of the receipt thereof. The applicant shall send a copy of such application to the representative of miners in the affected mine, or the operator, as appropriate. Upon receipt of such application, the director shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing, at the request of the operator or the representative of miners in such mine, to enable the operator and the representative of miners in such mine, present information relating to the issuance and continuance of such order or the modification or termination thereof or the time fixed in such notice. The filing of an application for review under this law shall not operate as a stay of any order or notice.~~

~~The operator and the representative of the miners shall be given written notice of the time and place of the hearing at least five (5) days prior to the hearing.~~

~~Upon receiving the report of such investigation, the director shall make findings of fact, and he shall issue a written decision, incorporating therein an order vacating, affirming, modifying, or terminating the order, or the modification or termination of such order, or the notice complained of and incorporate his findings therein.~~

~~In view of the urgent need for prompt decision of matters submitted to the director under this law, all actions which the director takes under this section shall be taken as promptly as practicable, consistent with adequate consideration of issues involved.~~

~~Pending completion of the investigation required by this section, the applicant may file with the director a written request that the director grant temporary relief from any modification or termination of order, or from any order issued under Chapter 22, Article 1, Section 14 of the West Virginia Code, except, an order issued under Chapter 22, Article 1, Section 15 of the West Virginia~~

Code, together with a detailed statement giving reasons for granting such relief. The director may grant such relief, under such conditions as he may prescribe, if:

- (1) A hearing has been held in which all parties were given an opportunity to be heard;
- (2) The applicant shows that there is substantial likelihood that the findings of the director will be favorable to the applicant; and
- (3) Such relief will not adversely affect the health and safety of miners in the coal mine.

No temporary relief shall be granted in the case of a notice issued under Chapter 22, Article 1, Section 14 of the West Virginia Code.

~~§56-3-15. Posting of Notices, Orders, and Decisions; Delivery to Agent of Operator; Names and Addresses to be Filed by Operator.~~

~~15.1.~~

(a) At each coal mine there shall be maintained an office with a conspicuous sign designating it as the office of the mine, and a bulletin board at such office or at some conspicuous place near an entrance of the mine, in such manner that notices, orders, and decisions required by this law or regulations to be posted on the mine bulletin board may be posted thereon, be easily visible to all persons desiring to read them, and be protected against damage by weather and against unauthorized removal. A copy of any notice, order, or decision required by these regulations to be given to an operator shall be delivered to the office of the affected mine, and a copy shall be immediately posted on the bulletin board of such mine by the operator or his agent.

(b) The director shall cause a copy of any notice, order, or decision required by these regulations to be given to an operator to be mailed immediately to a representative of the miners. Such notice, order, or decision shall be available for public inspection.

(c) In order to insure prompt compliance with any notice, order, or decision issued under these regulations, the authorized representative of the director may deliver such notice, order, or decision to an agent of the operator and such agent shall immediately take appropriate measures to insure compliance with such notice, order, or decision.

(d) Each operator of a coal mine shall designate a responsible official at such mine as the principal officer in charge of health and safety at such mine, and such official shall receive a copy of any notice, order, or decision issued under these regulations affecting such mine. In any case, where the coal mine is subject to the control of any person not directly involved in the daily operations of the coal mine, there shall be filed with the director the name and address of such person and the name and address of a principal official of such person who shall have overall responsibility for the conduct of an effective health and safety program at any coal mine subject to the control of such person and such official shall receive a copy of any notice, order, or decision issued affecting any such mine. The mere designation of a health and safety official under this subsection shall not be

construed as making such official subject to any penalty under these regulations.

~~§56-3-16. Judicial Review.~~

~~16.1.~~

~~(a) Any order or decision issued by the director under these regulations except an order or decision under Chapter 22, Article 1, Section 14 of the West Virginia Code shall be subject to judicial review by the circuit court of the county in which the mine affected is located or the circuit court of Kanawha County upon the filing in such court or with the judge thereof in vacation of a petition by any person aggrieved by the order or decision praying that the order or decision be modified or set aside in whole or in part, except that the court shall not consider such petition unless such person has exhausted the administrative remedies available under these regulations and files within thirty (30) days from the date of such order or decision.~~

~~(b) The party making such appeal shall forthwith send a copy of such petition for appeal, by registered mail, to the other party. Upon receipt of such petition for appeal, the Director of the Department of Energy shall promptly certify and file in such court a complete transcript of the record upon which the order or decision complained of was issued. The court shall hear such petition on the record made before the director. The findings of the director if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or modify any order or decision or may remand the proceedings to the director for such further action as it may direct.~~

~~(c) In the case of a proceeding to review any order or decision issued by the director under these regulations, except an order or decision pertaining to an order issued under subsection (a), Chapter 22, Article 1, Section 14 of the West Virginia Code or an order or decision pertaining to a notice issued under subsection (b), Chapter 22, Article 1, Section 14 of the West Virginia Code, the court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceeding if:~~

~~(1) All parties to the proceeding have been notified and give an opportunity to be heard on a request for temporary relief;~~

~~(2) The person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and~~

~~(3) Such relief will not adversely affect the health and safety of miners in the coal mine.~~

~~(d) The judgement of the court shall be subject to review only by the supreme court of appeals of West Virginia upon a writ of certiorari filed in such court within sixty (60) days from the entry of the order and decision of the circuit court upon such appeal from the director.~~

~~(e) The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the order or decision of the director.~~

~~(f) Subject to the direction and control of the attorney general, attorneys appointed for the director may appear for and represent him in any proceeding instituted under this section.~~

~~§56-2-17. Injunctions.~~

~~17.1. The director may institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the circuit court of the county in which the mine is located or the circuit court of Kanawha County, whenever the operator or his agent (a) violates or fails or refuses to comply with any order or decision issued under these regulations, or (b) interferes with, hinders, or delays the director or his authorized representative in carrying out the provisions of these regulations, or (c) refuses to admit such representatives to the mine, or (e) refuses to furnish any information or report requested by the director in furtherance of the provisions of these regulations, or (f) refuses to permit access to, and copying of, such records as the director determines necessary in carrying out the provisions of these regulations. Each court shall have the jurisdiction to provide such relief as may be appropriate. Except as otherwise provided herein, any relief granted by the court to enforce an order under clause (a) of this section shall continue in effect until the completion or final termination of all proceedings for review of such order under these regulations, unless, prior thereto, the circuit court granting such relief sets it aside or modifies it. In any action instituted under this section to enforce an order or decision issued by the director after a public hearing, the findings of the director, if supported by substantial evidence on the record considered as a whole, shall be conclusive.~~

~~§56-3-18. Penalties.~~

~~18.1.~~

~~(a)~~

~~(1) Any operator of a coal mine in which a violation occurs of any health or safety rule or regulation or who violates any other provision of these regulations, shall be assessed a civil penalty by the director under subdivision (3) of this subsection, which penalty shall be not more than three thousand dollars (\$3,000), for each violation. Each such violation shall constitute a separate offense. In determining the amount of the penalty, the director shall consider the operators' history of previous violations, the appropriateness of such penalty to the size of the business of the operator charged, the gravity of the violation and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation.~~

~~(2) Any miner who knowingly violates any health or safety provision of these regulations or health or safety rule or regulation promulgated pursuant to these regulations shall be subject to a civil penalty assessed by the director under subdivision (3) of this subsection which penalty shall not be more than two hundred fifty dollars (\$250) for each occurrence of such violation.~~

~~(3) A civil penalty shall be assessed by the director only after the person charged with a violation under these regulations has been given an opportunity for a public hearing and the director has determined, by a decision incorporating his findings of fact therein, that a violation did occur,~~

and that the amount of the penalty which is warranted, and incorporating, when appropriate, an order therein requiring that the penalty be paid. Any hearing under this section shall be of record.

(4) If the person against whom a civil penalty is assessed fails to pay the penalty within the time prescribed in such order, the director shall file a petition for enforcement of such order in any appropriate circuit court. The petition shall designate the person against whom the order is sought to be enforced as the respondent. A copy of the petition shall forthwith be sent by certified mail, return receipt requested, to the respondent and to the representative of the miners at the affected mine or the operator, as the case may be, and thereupon the director shall certify and file in such court the record upon which such order sought to be enforced was issued. The court shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order and decision of the director or it may remand the proceedings to the director for such further action as it may direct. The court shall consider and determine de novo all relevant issues, except issues of fact which were or could have been litigated in review proceedings before a circuit court under Chapter 22, Article 1, Section 18 of the West Virginia Code, and upon the request of the respondent, such issues of fact which are in dispute shall be submitted to a jury. On the basis of the jury's findings the court shall determine the amount of the penalty to be imposed. Subject to the direction and control of the attorney general, attorneys appointed for the director may appear for and represent him in any action to enforce and order assessing civil penalties under this subdivision.

(b) Any operator who knowingly violates a health or safety provision of these regulations or health or safety rule or knowingly violates or fails or refuses to comply with any order issued under Chapter 22, Article 1, Section 14 of the West Virginia Code, or any order incorporated in a final decision issued under this section, except an order incorporated in a decision under subsection (a) of this section or subsection (b), Chapter 22, Article 1, Section 21 of the West Virginia Code, shall be assessed a civil penalty by the director under subdivision (3) of subsection (a) of this section, of not more than five thousand dollars (\$5,000), and for a second or subsequent violation assessed a civil penalty of not more than ten thousand dollars (\$10,000).

(c) Whenever a corporate operator knowingly violates a health or safety provision of these regulations or health or safety rules, or knowingly violates or fails or refuses to comply with any order issued under these regulations or any order incorporated in a final decision issued under these regulations, except an order incorporated in a decision issued under subsection (a) of this section or subsection (b), Chapter 22, Article 1, Section 21 of the West Virginia Code, any director, officer, or agent of such corporation who knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties that may be imposed upon a person under subsections (a) and (b) of this section.

(d) Whoever knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to these regulations or any order or decision issued under these regulations shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than five thousand dollars (\$5,000) or imprisoned in the county jail not more than six (6) months, or both fined and imprisoned. The conviction of any person under this subsection shall result in the revocation of any certifications

held by him under Chapter 22 of the West Virginia Code which certify him or authorized him to direct other persons in coal mining operation of law and shall bar him from being issued any such license under Chapter 22 of the West Virginia Code except a miners' certification, for a period of not less than one (1) year or for such longer period as may be determined by the director.

~~(e) Whoever willfully distributes, sells, offers for sale, introduces or delivers in commerce any equipment for use in coal mines, including, but not limited to, components and accessories of such equipment, who willfully misrepresents such equipment as complying with the provisions of these regulations, or with any specification or regulations of the director applicable to such equipment, and which does not so comply, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be subject to the same fine and imprisonment that may be imposed upon a person under subsection (d) of this section.~~

~~§56-3-19. Discrimination.~~

~~19.1.~~

~~(a) No person shall discharge or in any other way discriminate against or cause to be discharged or discriminated against any miner or any authorized representative of miners by reason of the fact that he believes or knows that such miner or representative, (1) has notified the director, his authorized representative, or an operator, directly or indirectly, of any alleged violation or danger, (2) has filed, instituted or caused to be filed or instituted any proceeding under these regulations, (3) has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of these regulations. No miner or representative shall be discharged or in any other way discriminated against or caused to be discriminated against because a miner or representative has done (1), (2), (3), above.~~

~~(b) Any miner or representative of miners who believes that he has been discharged or otherwise discriminated against, or any miner who has not been compensated by an operator for lost time due to the posting of a withdrawal order, may, within thirty (30) days after such violation occurs, apply to the appeals board for a review of such alleged discharge, discrimination, or failure to compensate. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the appeals board shall cause such investigation to be made as it deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to enable the parties to present information relating to such violation. The parties shall be given written notice of the time and place of the hearing at least five (5) days prior to the hearing. Mailing of the notice of hearing to the charged party at last address of record as reflected in the records of the Department of Energy shall be deemed adequate notice to the charged party. Such notice shall be certified mail, return receipt requested. Any such hearing shall be of record. Upon receiving the report of such investigation, the board shall make findings of fact. If it finds that such violation did occur, it shall issue a decision within forty-five (45) days, incorporating an order therein, requiring the person committing such violation to take such affirmative action to abate the violation as the board deems appropriate, including, but not limited to, the rehiring or reinstatement of the miner or representative of miners to his former position with back pay, and also pay compensation for the idle time as a result of a withdrawal order. If it finds that there was no~~

~~such violation it shall issue an order denying the application. Such order shall incorporate the board's findings therein. If the proceedings under this section relative to the discharge due to delay caused by the operator, the miner shall be automatically reinstated until the final determination. If such proceedings are not completed within forty five (45) days of the date of discharge due to delay caused by the board, then the board may, at its option, reinstate the miner until the final determination. If such proceedings are not completed within forty five (45) days of the date of discharge due to delay caused by the miner the board shall not reinstate the miner until the final determination.~~

(c) Whenever an order is issued under this section, at the request of the applicant, a sum equal to the aggregate amount of all cost and expenses including the attorney's fees as determined by the board to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

~~§56-3-20. Record and Reports.~~

~~20.1. In addition to such records as are specifically required by these regulations, every operator of a coal mine shall establish and maintain such records, make such reports, and provide such information, as the director may reasonably require from time to time to enable him to perform his functions under these regulations. The director is authorized to compile, analyze, and publish, either in summary or detailed form, such reports or information so obtained. Except to the extent otherwise specifically provided by these regulations, all records, information, reports, findings, notices, orders or decisions required or issued pursuant to or under these regulations may be published from time to time, may be released to any interested person, and shall be made available for public inspection.~~

~~§56-3-21 7. Mine Foreman Examiner for Mine Foreman and Assistant Mine Foreman - Salary.~~

~~21 7.1. The Director of the Department of Energy Office of Miners' Health, Safety and Training shall appoint a mine foreman examiner to examine and certify mine foreman and assistant mine foreman and mine examiners. Such mine foreman examiners shall be paid a minimum salary of thirteen thousand five hundred dollars (\$13,500) thirty-one thousand thirty-two dollars (\$31,032.00) per year.~~

~~21 7.2. The duties of the mine foreman examiner shall be to:~~

(a) Prepare and conduct examinations of mine foreman, assistant mine foreman,

(b) Prepare and certify to the ~~d~~Director of the ~~department of energy~~ Office of Miners' Health, Safety and Training a register of all persons who successfully completed the examination with a passing grade of eighty percent (80%).

~~21 7.3. The Director of the Department of Energy Office of Miners' Health, Safety and Training, shall determine the location where the mine foreman examiner shall meet for the purpose of holding examinations, and at least two (2) weeks notice of time and place where the examinations are to be held shall be given.~~

The examinations shall be given at any location where there are at least five (5) men to be tested, and adequate facilities to conduct such examination. The office of the secretary to the mine foreman examiner shall be located in the eCapitol eComplex in Charleston. All records pertaining to the examinations shall be kept at such office.

21 7.4. The mine foreman examiner shall, with the approval of the dDirector, prepare, and from time to time, modify examinations to be administered to applicants for certification as mine foreman.

All persons who desire to appear for examination shall notify the mine foreman examiner of their intentions to appear, if possible, not less than ten (10) days prior to the date set for the examination. The mine foreman examiner shall inquire into the character and qualifications of the applicants who present themselves for examination.

21 7.5. Certificates of qualification of service heretofore granted shall have equal value with certificates of qualifications granted under these regulations.

21 7.6. The mine foreman examiner shall certify to the dDirector, on a form furnished by him, every person whose examination shall disclose his fitness for the duties of mine foreman, assistant mine foreman, and as above classified, and the dDirector shall prepare certificates of qualification for the successful applicants and send them to the mine foreman examiner for distribution.

21 7.7. The mine foreman examiner shall send to the dDirector the answers and all other papers of the applicants, together with the tally sheets and a list of the questions and answers as prepared by the mine foreman examiner which shall be filed in the department Office of Miners' Health, Safety and Training as public documents.

~~§56-3-22. Withdrawal of Certification.~~

~~22.1.~~

~~(a) Charge of breach of duty—A mine inspector or the director may charge a mine foreman, assistant mine foreman, or any other certified person with neglect or failure to perform any duty mandated pursuant to these rules and regulations. The charge shall state the name of the person charged, the duty or duties he is alleged to have violated, the approximate date and place so far as is known of the violation of duty, the capacity of the person making the charge, and shall be verified on the basis of information and belief or personal knowledge. The charge is initiated by filing it with the director or with the board of appeals. A copy of any charges filed with the board of appeals or any member thereof, shall be transmitted promptly to the director. The director shall maintain a file on each charge and of all related documents which shall be open to the public.~~

~~(b) Evaluation of charge by board of appeals.—Or within twenty (20) days after receipt of the charge the board shall evaluate the charge and determine whether or not a violation of duty has been stated. In making such a determination the board shall evaluate all documents submitted to it by all persons to determine as nearly as possible the substance of the charge and if the board of~~

appeals is unable to determine the substance of the charge it may request the director to investigate the charge. Upon request, the director shall investigate the charge and report the results of the investigation to the board of appeals within ten (10) days of his receipt of the charge. If the board determines that probable cause exists to support the allegation that the person charged has violated his duty, the board by the end of the twenty (20) day period shall set a date for hearing which date shall be within eighty (80) days of the filing of the charge. Notice of the hearing or notice of denial of the hearing for failure to state a charge and a copy of the charge shall be mailed by certified mail, return receipt requested, to the charging party, the charged party, the director, the representative of the miner or miners affected, and to any interested person of record. Thereafter the board shall maintain the file of the charge which shall contain all documents, testimony and other matters filed which shall be open for public inspection.

(c) Hearing. — The board of appeals shall hold a hearing, may appoint a hearing examiner to take evidence and report to the board of appeals within the time allotted, may direct or authorize taking of oral depositions under oath by any participant, or adopt any other method for the gathering of sworn evidence which affords the charging party, the charged party, the director and any interested party of record due process of law and a fair opportunity to present and make a record of evidence. Any member of the board shall have the power to administer oaths. The board may subpoena witnesses and require production of any books, papers, records, or other documents relevant or material to the inquiry. The board shall consider all evidence offered in support of the charge and on behalf of the persons so charged at the time and place designated in the notice. Each witness shall be sworn and a transcript shall be made of all evidence presented in any such hearing. No continuance shall be granted except for good cause shown.

At the conclusion of the hearing the board shall proceed to determine the case upon consideration of all the evidence offered and shall render a decision containing its findings and conclusions of law. If the board finds by a preponderance of the evidence that the certificate or certificates of the charged person should be suspended or revoked, as hereinafter provided, it shall enter an order to that effect. No renewal of the certificate shall be granted except as herein provided.

(d) Failure to cooperate. — Any person charged who shall, without just cause refuse or fail to appear before the board or cooperate in the investigation or gathering of evidence shall forfeit his certificate or certificates for a period to be determined by the board, not to exceed five (5) years, and such certificate or certificates may not be renewed except upon a successful completion of the examination prescribed by the law for mine foreman, assistant mine foreman, or other certified person.

(e) Penalties. — The board may suspend or revoke the certificate or certificates of a charged party for a minimum of thirty (30) days or more including an indefinite period or may revoke permanently the certificate or certificates of the charged party, as it sees fit, subject to the prescribed penalties and monetary fines imposed elsewhere in this chapter.

(f) Integrity of penalties imposed. — No person whose certification is suspended or revoked under this provision can perform any duties under any other certification issued under chapter 20 or 22 of this code, during the period of the suspension imposed herein.

(g) Any party adversely affected by a final order or decision issued by the board hereunder shall be entitled to judicial review thereof pursuant to section 4, article 5, chapter 29(a) of this code.

~~§56-3-23. Certification of Mine Foreman or Assistant Mine Foreman Whose License to Engage in Similar Activities Suspended in Another State.~~

23.1. Any person whose license, certificate or similar authority to perform any supervisory duties in another state has been suspended or revoked by that state cannot be certified under any provision of this chapter during the period of such suspension or revocation in the other state.

~~§56-3-24. Board of Appeals.~~

24.1. There is hereby created a board of appeals, Chapter 22, Article 1, Section 31, consisting of three (3) members. Two (2) members of the board shall be appointed by the Governor, one (1) person who by reason of previous training and experience may reasonably be said to represent the viewpoint of miners, and one (1) person who by reason of previous training and experience may reasonably be said to represent the viewpoint of the operators. The third (3rd) person, who shall be chairman of the board and who must not have had any connection at any time with the coal industry or an organization representing miners, shall be selected by the two (2) members appointed by the Governor. The term of office of members of the board shall be five (5) years.

The function and duties of the board shall be to hear appeals, make determinations on questions of miners' entitlements due to withdrawal orders and appeals from discharge or discrimination, and suspension of certification certificates.

The chairman of the board shall have the power to administer oaths and subpoena witnesses and require production of any books, papers, records, or other documents, relevant or material to the appeal inquiry.

Each member of the board shall receive fifty dollars (\$50) per diem while actually engaged in the performance of the work of the board and shall receive mileage at the rate of ten cents (10¢) for each mile actually traveled going from home of the member to the place of the meeting of the board and returning therefrom, which shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by such members of the board.

Board members, before performing any duty, shall take and subscribe to the oath required by Article 4, Section 5 of the constitution of West Virginia.

~~§56-3-25 8. Certification of Out-of-state Surface Mine Foreman.~~

25.1.

(a) In every surface mine where five (5) or more persons are employed in a period of twenty-four (24) hours, the operator shall employ at least one (1) person certified in accordance with the

provisions of Article 6(a) of Chapter 20 as a mine foreman. Each applicant for certification as a mine foreman shall, at the time he is issued a certificate of competency: (1) be a resident or employed in a mine in this state; (2) have had at least three (3) years experience in surface mining, which shall include at least eighteen (18) months experience on or at a working section of a surface mine or be a graduate of the school of mines at West Virginia University or of another accredited mining engineering school and have had at least two (2) years practical experience in a surface mine, which shall include at least eighteen (18) months experience on or at a working section of a surface mine; and (3) have demonstrated his knowledge of mine safety, first aid, safety appliances, emergency procedures relative to all equipment, state and federal mining laws and regulations and other subjects by completing such training, education and examinations as may be required of him under Article 6(a) of Chapter 20.

(b) In surface mines in which the operations are so extensive that the duties devolving upon the mine foreman cannot be discharged by one (1) man, one (1) or more assistant mine foreman may be designated. Such person shall act under the instruction of the mine foreman who shall be responsible for their conduct in the discharge of their duties. Each assistant so designated shall be certified under the provisions of Article 6(a) of Chapter 20. Each applicant for certification as assistant mine foreman shall, at the time he is issued a certificate of competency, possess all of the qualifications required of a mine foreman: **Provided**, That he shall, at the time he is certified, be required to have at least two (2) years experience in surface mining, which shall include eighteen (18) months on or at a working section of a surface mine or be a graduate of the school of mines at West Virginia University or of another accredited mining engineering school and have had twelve (12) months practical experience in a surface mine, all of which shall have been on or at a working section.

(c) The director shall on the first day of July, one thousand nine hundred seventy-eight (1978), promulgate such rules and regulations as may be necessary to carry out the provisions of Chapter 20, Article 6 of the West Virginia Code.

25-2. 8.1 Any person holding a mine foreman's certificate issued by any other state may act in the capacity of mine foreman in any mine in this state until the next regular mine foreman examination held by the department Office of Miners' Health, Safety and Training, but not to exceed a maximum of ninety (90) days.

§56-3-26 9. Instruction of Employees and Supervision of Apprentices; Annual Examinations of Persons Using Flame Safety Lamps— Approved Detectors; Records of Examination; Maintenance of Methane Detectors, Etc.

26 9.1. It shall be the duty of the mine foreman or the assistant mine foreman of every coal mine in this state to see that every person employed to work in such mine shall, before beginning work therein, be instructed in the particular danger incident to his work exposure in such mine., and be furnished a copy of the mining laws and rules of such mine. For those mines employing less than five (5) persons in a period of twenty-four (24) hours and who do not have a mine foreman, a competent person, as defined in 56 CSR § 3.3.87, shall perform this duty.

26 9.2. No person shall be qualified for testing for methane and for oxygen deficiency unless each such person has been trained and demonstrates to the satisfaction of an authorized representative of the Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training that he is qualified to test for methane with ~~a flame safety lamp or another~~ an approved methane detectors. Records of such examinations shall be kept by the operator and the Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training.

Persons whose duties require them to use ~~a flame safety lamp and other~~ approved detectors, that have been qualified by the ~~Department of Energy~~ Office of Miners' Health, Safety and Training to test for methane and oxygen deficiency, shall be examined at least annually to their competence by a certified mine foreman and a record that such examination was given, together with pertinent data relating thereto, shall be kept on file by the operator and a copy shall be furnished to the ~~department of energy~~ Office of Miners' Health, Safety and Training.

Persons whose duties require them to administer the annual examinations for methane and oxygen deficiency shall be examined annually by a qualified official from the ~~Department of Energy~~ Office of Miners' Health, Safety and Training. Each operator shall provide for the proper maintenance, and before each shift, care shall be taken to insure that such ~~lamp or other device~~ approved detector is in a permissible condition. ~~Flame safety lamps~~ Approved detectors shall be given proper maintenance and inspection before each working shift in a manner recommended by the manufacturing company and approved by the ~~Director of the department of energy~~ Office of Miners' Health, Safety and Training. Other approved gas detectors shall be given proper maintenance and shall be tested in accordance with the manufacturer's recommendations before each working shift and calibrated each thirty (30) calendar days.

26 9.3. Job assignments to any miner. -- When a job assignment is given to any miner that he has not performed in the recent past, such inexperienced person, in the particular job assignment shall be instructed in the hazards incident thereto and the law and regulations relevant thereto prior to performing any duties in such new job assignment. When such job assignment includes the operation of equipment, the instruction shall include a supervised dry run. Instructions shall be given by a person(s) competent in the operation of the equipment as well as the hazards associated with surface mining and shall include the proper use, function testing, and maintenance of all safety features of the equipment. When the job assignment related to a plan in effect at the mine, the relevant portions of the plan shall be reviewed. A record shall be kept of such instruction and made available to a representative of the Director upon request.

§56-3-27 10. Mine Foreman and Assistant Mine Foreman; Daily Inspection of Working Places; Records.

27 10.1. Pre shift examination.

(a) Prior to the beginning of any shift the mine foreman or assistant mine foreman shall visit and carefully examine ~~highwalls in the working area and spoil piles for cracks, loose materials, overhanging ledges, and other dangerous conditions~~ all active working places of the surface mine.

(b) Upon completion of the examination, the foreman shall record the results in a book prescribed by the ~~d~~Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training, at the designated station at the surface mine before persons enter the working area of the mine. Before the beginning of any shift upon which they shall perform supervisory duties, the mine foreman or his assistant shall review carefully and countersign all books and records of the prior shift reflecting the conditions and the areas under their supervision, exclusive of equipment logs, which the operator is required to keep.

(c) The operator shall have weekly safety meetings with all employees which shall provide training in the working practices and conditions at the mine and rules and regulations applicable thereto. A record of the topic of the weekly safety meetings shall be kept and signed by all people in attendance. This record shall be kept for one (1) year and made available to a representative of the Director upon request.

27 10.2. On-shift examination.

(a) The mine foreman or assistant mine foreman shall examine all working places ~~in the pit at the surface mine~~ under his supervision for hazards at least once every four (4) hours during each working shift, or more often if necessary for safety. Upon completion of the examination(s) the foreman shall record the results and time(s) in a book prescribed by the Director. The mine foreman shall also, each day, read carefully and countersign with ink or indelible pencil all reports entered in the record book by the mine foreman or his assistants on the prior shift.

(b) It shall further be the duty of the mine foreman or the assistant mine foreman to carefully examine the haulage roads ~~in the pit area at the surface mine~~ for slips, cracks, overhanging trees and other dangerous conditions during his pre-shift and on-shift examinations.

27 10.3. Dangerous conditions. -- Should the mine foreman or his assistants find a place to be in a dangerous condition, they shall not leave the place until it is made safe, or shall remove the persons working therein until the place is made safe by some competent person designated for that purpose.

He shall also record any dangerous conditions and practices found during his examination in a book provided for that purpose.

27 10.4. Close deep operations. -- When a surface mine operation is known to be close to an active underground mine, the mine foreman or superintendent shall give the official representative of the underground mine at least twelve (12) hours notice in advance of any contemplated blasting that may endanger the safety of persons employed in the underground mine.

27 10.5. Instructions. -- The mine foreman shall see that every newly employed person ~~employed~~ to work at such mine shall, before the beginning work therein, be instructed in the particular dangers incident to his ~~work~~ exposure in such mine, and be furnished a copy of the state surface mining rules and regulations. A record of such instructions shall be kept and made available upon request by an authorized representative of the Director.

27 10.6. Records of examinations.

(a) All violations or hazardous conditions and the action taken to correct such violations or conditions including the pre-shift and on-shift examinations shall be recorded with ink or indelible pencil in a book prescribed by the Director of the Department of Energy Office of Miners' Health, Safety and Training, and kept for such purpose at a place at the surface mine designated by mine management at the mine office for a period of one year. All records of daily, and weekly reports as prescribed herein, shall be open for inspection by interested persons, and the record book shall be kept for a period of one (1) year.

27 10.7. It shall be the duty of the mine foreman or assistant mine foreman to examine each mine within three (3) hours prior to the beginning of a shift and before any miner on such shift enters the active workings of the mine.

27 10.8. The mine foreman shall give prompt attention to the removal of all dangers reported to him by his assistants, or any other person working in the mine, and in case it is impracticable to remove the danger at once, he shall notify all persons whose safety is menaced thereby to remain away from the area where the dangerous condition exists.

27-10.9 For those surface mines that do not employ five or more persons in a period of twenty-four hours and that do not have a certified mine foreman, the mine operator shall designate a competent person, as defined in 56 CSR § 3-3.87, to perform the duties of a mine foreman set forth in this section. The name of the designated competent person shall be recorded and such record shall be made available upon request.

§56-3-28 11. Duty of Mine Foreman to Notify Operator When Unable to Comply with Law; Duty of Operator.

28 11.1. The mine foreman shall notify, in writing the operator or superintendent of the mine, and the ~~d~~Director of the Department of Energy Office of Miners' Health, Safety and Training, of his inability to comply with any of the requirements of this law, and it shall then become the duty of such operator or superintendent promptly to attend to the matter complained of by the mine foreman so as to enable him to comply with the provisions hereof. Every operator of a mine shall furnish all supplies necessary for the mine foreman to comply with the requirements of this law after being requested to do so in writing by the mine foreman. For those mines employing less than five (5) persons in a period of twenty-four (24) hours and who do not have a mine foreman, a competent person, as defined in 56 CSR § 3.3.87, shall perform this duty.

§56-3-29 12. Death Or Resignation Of Mine Foreman; Successor.

29 12.1. In case of death or resignation of mine foreman, the superintendent or manager shall appoint a certified ~~man~~ person to act as mine foreman.

§56-3-30 13. Excavating.

~~30~~ 13.1. Loose material removal. -- Loose hazardous material shall be stripped for a safe distance (~~minimum of fifteen (15) feet~~), except where vegetation is required to support the slope from the top of pit or highwalls, and the loose unconsolidated material shall be sloped to the angle of repose. ~~or barriers, baffle boards, screen, or other approved devices that afford equivalent protection~~

~~30~~ 13.2. Benches. -- When a bench is required to insure safe operations, the width and height of the bench shall be governed by the type of equipment to be used and the operations to be performed, type of material and height of wall.

~~30~~ 13.3. Highwall and spoil bank work areas.

(a) The highwall shall be sloped or benched when required by the ~~Department of Energy Office of Miners' Health, Safety and Training~~, to prevent or minimize the danger of slide. All overhanging ledges and loose material shall be scaled from the highwall. When scaling of highwalls is necessary to correct conditions, a safe means shall be provided to perform such work.

(b) When the highwall is cracked and shows evidence of movement, or of weakening, the area shall be made safe or abandoned and dangered off.

(c) Trees endangering workmen along highwalls shall be removed. If trees creating a hazard cannot be removed, the pit area below the hazardous trees shall be barricaded and no workers shall enter the barricaded area. Such work shall be completed during daylight hours.

(d) Spoil banks shall be placed an adequate distance from the pit to prevent any material from rolling back and endangering the workmen. Spoils shall be kept free of bodies of water which would be hazardous in active work areas. Spoil material shall be sloped to the angle of repose or other measures taken to prevent the material from slothing, sliding, or rolling into the pit.

(e) Persons, other than those designated to correct unsafe conditions, shall not work near or under dangerous highwalls or banks.

(f) During bench loading, adequate precautions shall be taken to prevent equipment from going over a highwall.

~~30~~ 13.4. Examinations.

(a) Should a slide occur, a certified foreman or assistant shall examine the area of the slope for danger of additional slides. No person shall work in the area until the examination is complete and the area declared safe.

~~30~~ 13.5. Repairs in excavation areas. -- Special safety precautions shall be taken when persons are required to perform repair work between immobilized equipment and within twenty (20) feet of the highwall or spoil bank where such equipment may hinder escape from falls or slides. A competent person shall be designated to observe the highwall or spoil bank. If equipment is mobile

and repair work is necessary on such equipment, such equipment will be moved to a location outby the highwall or spoil bank.

30 13.6. Tree removal. -- When men are in the area, suitable warning shall be given before equipment shoves over or uproots trees, and workmen shall be removed from the immediate vicinity.

30 13.7. Night work. -- When surface mining is performed at night, the pits, highwalls, and dump areas in the vicinity of the work shall be adequately illuminated.

30 13.8. Dump areas.

(a) Safety berms shall be provided at the edge of all fill areas to prevent over-travel or overturning. The berm will consist of material end dumped and/or pushed by the fill dozer to create an adequate berm. The minimum height of the berm will be axle height of the largest rubber tire equipment working on the fill. Safety berms shall not be damaged by, or used as a stop block, by haulage equipment.

(b) Should the outer slope of the fill become steeper than the safe angle of repose, short-dumping procedures shall be initiated. Equipment operators and truck drivers operating on the fill will be informed of the steep slope condition and will be required to dump a minimum of one truck length from the edge of the fill. Material shall be pushed with a dozer until safe angle of repose is established.

(c) In the event tension cracks appear near the outer edge of the fill, short dumping will be initiated. Equipment operators and truck drivers working on the fill will be informed of the tension cracks and will be required to dump a minimum of one (1) truck length from the tension cracks.

(d) In the event of tension cracks developing in a fill, the following procedures shall be initiated:

(1) The fill dozer shall begin a cut a safe distance back from tension crack. The cut will extend forward to the edge of the fill.

(2) The dozer operator will take special precautions to prevent over-travel at the edge of the fill. This procedure will be utilized until the tension crack is removed.

(3) Material will be dumped at the back edge of the cut and pushed in place by the fill dozer to reestablish the safe working elevation. Should additional tension cracks occur these procedures will be repeated.

(e) The surface of the fill shall be graded/sloped to prevent water from impounding near the edge of the fill.

§56-3-31 14. Drilling.

~~31~~ 14.1. Inspection. -- ~~Where required by the director, all~~ All drilling equipment shall be provided with restraining devices installed properly to prohibit the free fall of drill steels which may break or become ~~dethreaded~~ unthreaded at the point of the adaptor.

~~31~~ 14.2. Horizontal drill.

(a) When horizontal drills are used, the operator shall not leave the controls while the drill stems are in operation.

(b) All persons shall be required to keep in the clear of auger and drill stems while in motion. No person shall be permitted to pass under or step over a moving drill stem or auger.

(c) Prior to horizontal holes being drilled in overburden, a careful inspection of the highwall face shall be made. All loose hazardous material shall be removed before other work is performed.

~~31~~ 14.3. Vertical drilling.

(a) When vertical drilling operations are being performed, the drill machine shall be continuously attended.

(b) When churn drills or vertical rotary drills are used, the drill machine operator shall not work under suspended tools. When collaring holes, inspecting, or during any operation where tools are removed from the hole, the tools shall be lowered to the ground or platform.

~~31~~ 14.4. General precautions (drilling).

(a) When drilling operations are being performed in the area of abandoned mines, special precautions shall be taken to protect against methane.

(b) In the event of a power failure, drill machine controls shall be placed in the neutral position.

(c) No person shall be permitted around auger and drill stems that are in motion.

(d) Starter hole drill steels shall be utilized when collaring holes with a hand-held drill.

(e) No person shall be permitted on the drill mast while the drill bit or carriage is in motion. Tools and/or other material shall not be left on the drill mast.

(f) Threads on all drill steels and attached components shall be maintained to provide secure attachment.

~~31~~ 14.5. Drilling position.

(a) Drill machine operators shall not drill from positions that hinder their access to controls levers, or from insecure footing, or staging, or from atop equipment not designated for this purpose.

(b) Men shall not hand grasp the drill steel while collaring holes or place their hand on the chuck or centralizer while drilling.

(c) Men operating or working near jackhammers or jackleg drills, shall position themselves so they will not be struck or lose their balance if the drill steel breaks.

(d) No holes shall be drilled atop the highwall within six (6) feet of the edge of the highwall. Drills shall not be positioned atop the highwall where safe egress from the operator's cab cannot be maintained.

(e) When drilling near the base of a highwall, the drill shall be positioned so the operator's cab is on the side of the drill away from the highwall.

~~31~~ 14.6. Movement of drills.

(a) Vertical drill holes and blast crevices that remain open after blasting and constitute a hazard shall be protected to prevent persons from falling into them.

(b) While moving a drill machine from one area to another, drill steel tools and other equipment shall be secured and the mast placed in a safe position.

(c) The location of the drill machine helper shall be known to the drill machine operator at all times while such drill is being moved.

(d) Hand-held air drills shall be turned off and all air bled from air hoses before such drill is moved from one (1) working area to another and at the end of each shift.

(e) The ~~Director of the Department of Energy~~ Secretary of the West Virginia Department of Environmental Protection shall be responsible for the examinations and certification of persons engaging in or directly responsible for blasting or use of explosives in surface mining operations.

~~§56-3-32~~ 15. Explosives and Blasting.

32. 15.1. Transportation vehicles. -- Motor vehicles used to haul explosives shall comply with the following provisions:

(a) Portable fire extinguisher. -- A portable fire extinguisher shall be a multi-purpose dry chemical type, containing a nominal weight of five (5) pounds of dry powder and enough expellant to apply the powder; or a foam-producing type containing at least two (2) and one-half (1/2) gallons of foam-producing liquid and enough expellant to supply foam. Only fire extinguishers approved by the Underwriters Laboratories, carrying appropriate labels as to type and purpose, shall be used.

(b) All electric wiring shall be adequately protected and securely fastened. Damaged insulated wiring shall be repaired or replaced immediately.

(c) Chassis, engine, pan and bottom of vehicle body shall be reasonably clean and free of oil and grease. Cargo bins shall be cleaned as often as necessary to prevent the excessive accumulation of ammonium nitrate or emulsion on/atop the bins.

(d) Fuel tanks and lines shall have no leaks.

(e) Safety devices including but not limited to lights, horn, brakes, windshield wipers, and steering apparatus shall be functioning properly.

(f) When explosives are not transported in their original closed containers, or in special closed cases constructed of nonconductive material, the vehicle cargo space shall be lined with wood or approved nonsparking material.

(g) The vehicle shall be plainly marked to indicate the nature of the cargo.

(h) The vehicle shall be equipped with suitable side and tailgates. The explosives shall not be piled higher than the side or end.

(i) Handrails or fall protection devices shall be provided when persons are required to work atop of the cargo bin of the bulk explosives truck.

(j) Maintenance and examinations shall be performed on the emulsion pump in accordance with the manufacturer's safety specifications. A record of the examinations shall be kept with the vehicle for one year and made available to a representative of the Director, and an authorized representative of the miners, upon request.

32 15.2. Transportation of explosives - precautions.

(a) Explosives and/or detonators shall not be transported in the same vehicle unless separated by a substantially fastened four-inch (4") hardwood partition or equivalent approved material.

(b) Explosives and/or detonators shall be transported promptly without undue delays.

(c) Only those persons necessary shall be permitted ~~to ride on or~~ in vehicles containing explosives and/or detonators.

(d) When vehicles containing explosives or detonators are parked on a grade, the parking brakes shall be set and the vehicle blocked securely against rolling.

(e) Vehicles containing explosives and/or detonators shall not be taken to a repair garage or shop.

(f) Vehicles containing explosives and/or detonators shall not be left unattended unless the vehicle and all compartments containing explosives and/or detonators are properly locked to prevent unauthorized access.

(g) Safe roads shall be maintained for access and exit to all blast areas where boreholes are loaded, or being prepared to be loaded.

32 15.3. General requirements - explosives.

(a) After the effective date of the certified blasters rules and regulations, all handling and transporting of explosives shall be under the direct supervision of a certified blaster.

~~(b) Previously frozen explosives of nitroglycerin base shall not be used. The transportation, storage, handling, and use of explosive materials and blasting accessories shall be in accordance with the current Institute of Makers of Explosives Warnings and Instructions. A copy of the current Institute of Makers of Explosives Warnings and Instructions shall be posted at the mine. All persons involved in the blasting procedure shall be properly trained and familiar with these Warnings and Instructions and a record kept of this training for one (1) year and made available to a representative of the Director and an authorized representative of the miners upon request.~~

(c) Open fires and flames are prohibited within fifty (50) feet of the area where explosives are being stored, handled or used. Any person who violates this subsection shall be subject to the maximum assessment of two hundred fifty dollars (\$250).

~~(d) Explosives, blasting caps and electric blasting caps and detonators shall not be carried in pockets of clothing or left lying around unguarded.~~

~~(e) The use of explosives and handling incident thereto, will shall be discontinued during the approach of and during whenever lightning is seen or thunder is heard, or a thunderstorm and/or electrical storm is detected and all personnel shall be withdrawn from the blast area. When drills are being operated on a bench with loaded holes, or holes being loaded, masts shall be lowered upon the approach of a thunderstorm and/or electrical storm.~~

(f) All runways, chutes and conveyors used for unloading of explosives shall have no exposed sparking metal parts.

(g) Explosives and detonators shall be kept a safe distance from the highwall and spoil bank.

~~(h) Driving vehicles or dragging boxes over firing lines, detonator wires, explosives, blasting agents, and detonators shall be prohibited. The backing of drills over loaded holes shall be prohibited. Mobile equipment and vehicles shall not be trammed or driven over loaded holes.~~

~~(i) Explosives of nitroglycerin base known to be previously frozen shall not be used. Deteriorated or damaged explosives and detonators shall be destroyed by an authorized representative of the manufacturing company.~~

(j) Explosives and/or detonators shall not be transported in a bucket or a dragline or like equipment.

(k) Defective or damaged blasting equipment or accessories shall not be used.

32 15.4. Shooting preparation.

(a) Primers shall not be made up until ready to be inserted in the hole.

(b) Two (2) way radio equipment shall be turned off prior to the handling and use of electric detonators for proposed shot. This rule does not apply to radios operating beyond the distances shown on Table 38-3A 15.4A found at the end of this regulation section. Adequate warning signs shall be located on all travel roads at a distance of not less than one hundred (100) feet from the minimum transmitting distance. When using electronic detonators, the detonators shall be protected from electromagnetic, radio frequency transmissions, or other electrical interference sources in accordance with the manufacturer's recommendations.

(c) Only drills, explosives trucks, mobile equipment suitable for hole stemming, and equipment necessary ~~No equipment except the drill and explosive truck, other than necessary equipment~~ for road repairs to remove the drills or explosive trucks, shall be permitted to work within fifty (50) feet of the entire column of loaded holes or holes being loaded. Mobile equipment such as small front end loaders and other suitable hole stemming equipment shall be allowed to assist hole stemming procedures where adequate hole diameters are drilled and an adequate distance is provided between holes and rows of holes to ensure the safe operation and movement of equipment. The use and operation of all equipment used to stem holes shall be under the direct supervision of a certified blaster. Equipment powered by external electrical sources and power cables shall be prohibited from being within one hundred (100) feet of loaded holes or holes being loaded; where such equipment is being used and electrical detonators are being used, stray current test shall be made on the bench prior to commencing the loading of holes, if current is detected, such power cables be moved to a safe distance or the power cables shall be deenergized. When the equipment indicated above has malfunctioned and cannot be removed from the area, the blaster and certified foreman shall direct the use of maintenance equipment if required to safely repair and/or remove the disabled equipment from the area. Adequate precautions shall be taken to prevent extraneous electricity from entering an electrical blasting circuit. Electrically-powered equipment and trailing cables shall be prohibited from being within one hundred (100) feet of loaded holes or holes being loaded. When a potential source of extraneous electricity is present within three hundred (300) feet and electrical detonators are to be used, a stray current test shall be made on the bench prior to commencing loading holes; if current is detected, the source of the extraneous electricity shall be neutralized before loading may begin.

(d) Holes shall not be drilled if there is danger of intersecting a loaded or a misfired hole. When drill(s) are being operated on a bench being loaded, a minimum of one hole around the perimeter of the drill shall remain unprimed and unloaded.

(e) Only wooden or other approved nonsparking implements shall be used to punch holes in an explosive cartridge.

(f) Tamping poles shall be blunt and squared at the end and made of wood or other, nonsparking, approved material.

(g) Tamping shall not be performed directly on a capped primer.

(h) When a surface mine has cut into a known active underground mine, the surface mine inspector of the district and an official representative of the deep mine shall be notified before any blasting is performed. The surface mine inspector, deep mine representative and surface mine representative shall determine and agree during what hours blasting shall be performed.

(i) Misfires shall be handled only by or under the direction of a designated blaster ~~or~~ and certified foreman.

~~(j) Blasting caps shall be crimped to fuses only with implements designed for that specific purpose. In order for the blaster to maintain control of the shot, up to the point of detonation, no type of safety fuse detonators shall be used.~~

~~(k) In no case shall any forty (40) second per foot safety fuse less than thirty six (36) inches long or any thirty (30) second per foot fuse less than forty eight (48) inches long be used.~~

~~(l) Nothing except a safety fuse is to be inserted in the open end of a blasting cap.~~

~~(m)~~ (k) No detonators, detonating cord, igniter cord, safety fuse, or any explosives shall be used if they have been water soaked.

~~(n)~~ (l) Electric blasting caps shall be fired with an approved blasting device.

~~(o)~~ (m) Explosives shall be kept separated at least fifteen (15) feet from detonators until loading is started, unless an approved container is utilized.

~~(p)~~ (n) Ample warning shall be given by an approved audible warning device before blasts are fired. All persons shall be removed from the blasting area.

~~(q)~~ (o) Detonating caps taken into a pit prior to being used shall be kept in a wooden box or other approved suitable container.

~~(r)~~ (p) At least a five (5)-foot air gap shall be provided between the blasting circuit and the power circuit when the hole or series of holes are being connected.

(q) When loading beneath highwalls, the highwall shall be carefully inspected by the blaster and foreman in charge before beginning the loading process. Persons shall not load boreholes in areas where the highwall is cracked, shows evidence of movement or weakening, or has loose

material falling from the highwall. For those surface mines that do not employ five or more persons in a period of twenty-four hours and that do not have a certified mine foreman, the mine operator shall designate a competent person, as defined in 56 CSR § 3.3.87, to perform the duties of the foreman in charge set forth in this section. The name of the designated competent person shall be recorded and such record shall be made available upon request.

(r) Boreholes shall not be located within six (6) feet of the outer edge of the highwall where such location could create a danger of falling over the highwall by persons loading boreholes. Persons loading boreholes shall not work within six (6) feet of the outer edge of the highwall.

TABLE 38-3A 15.4A

Transmitter Power (Watts) (except FM mobile)	Minimum Distance (Feet)
5 - 25	100
25 - 50	150
50 - 100	220
100 - 250	350
250 - 500	450
500 - 1000	650
1000 - 2500	1000
2500 - 5000	1500
5000 - 10000	2200
10000 - 25000	3500
25000 - 50000	5000
50000 - 100000	7000

Transmitter Power (Watts) (FM mobile)	Minimum Distance (Feet)
1 - 10	5
10 - 30	10
30 - 60	15
60 - 250	30

32-15.5. Shooting Cables. Firing/Lead lines.

(a) Firing/Lead lines ~~Shooting cables~~ shall be well insulated and as long as may be necessary to permit persons authorized to fire shots to get in a safe place out of the line of fire.

(b) Firing/Lead lines ~~Shooting cables~~ shall be kept away from power wires and all other sources of electric current.

(c) When shooting highwall and overburden, the firing/lead lines shooting cable shall be at least five hundred (500) feet in length. ~~when new and never less than four hundred fifty (450) feet.~~

(d) The firing/lead lines shooting cable for use in popping coal shall be of sufficient length to assure the safe location of persons participating in the blasting, and in no event less than ~~one~~ five hundred (~~100~~ 500) feet in length.

(e) When using electric caps the firing/lead line ~~shooting cable~~ shall be kept shunted until connected to the approved blasting device.

(f) Except when being tested with a blasting galvanometer, or other approved device, electric detonators shall be kept shunted until they are connected to the ~~blasting~~ firing/lead line or wired into a blasting round.

(g) A wired round shall be kept shunted until connected to the ~~shooting cable~~ firing/lead line when using electric caps.

(h) The blast area shall be cleared of personnel, vehicles, and equipment prior to connecting the firing/lead line to the firing device or blast controller or in the case of remote-controlled detonation systems, prior to arming the firing device.

(i) Remote control detonation systems shall be used in accordance with manufacturer's instructions. A copy of these instructions shall be posted at the mine. All persons involved with the blasting procedure shall be properly trained and familiar with the manufacturer's instructions. A record of such training shall be kept for one (1) year and made available to a representative of the Director upon request.

(j) When using electric or electronic detonators, adequate precautions shall be provided to prevent accidental electrical shock to the person(s) detonating the blast. Provisions may include, but not be limited to, insulating and guarding the firing/lead line connections to the firing device or blast controller, providing and using insulating mats on which the blaster may stand and also place under the firing device or blast controller, the use of an additional properly-timed detonator placed in the firing/lead line to sever the line and prevent the possibility of electrical feedback to the firing device, blast controller, or remote firing device.

32 15.6. Blasting.

(a) Any area in which ~~loaded holes are prepared to be fired~~ being loaded shall be guarded by a barrier ~~barriade~~ and danger signs located 50 feet beyond/outby the perimeter of loaded holes, or by a person physically present to prevent unauthorized entry.

(b) The blaster shall make sure that all persons are in a safe place before firing a shot. Additional personnel and radio communication, if needed to assure security of the blast area shall be utilized. Radio silence shall be observed by all persons except those involved in the blasting

procedure. An approved audible warning device shall give ample warning before blasts are fired. The pre-blast warning signal shall be sounded three (3) minutes prior to the detonation of the blast and this signal shall consist of three short warning signals with five (5) second intervals between these signals. The post-blast signal that the blast area is clear shall consist of a twenty (20) second in duration signal. The warning shall be audible for a distance of at least one-half (1/2) mile.

(c) The blaster performing the blasting shall be the person who makes the detonating cord connections or connects the leg wires of the detonating caps to the shot cable. The blaster shall assure that all components are properly connected to assure proper detonation of the blast.

(d) All holes or series of holes containing detonators shall be fired immediately upon completion of loading. The blaster shall notify the supervisor in charge of workers in the area before commencing to connect loaded holes. Once beginning to connect loaded holes, this shall proceed without delay until all holes are connected. All persons within a three hundred (300) foot radius of the blast area shall be removed by the time all holes are connected and work shall not commence again until the holes have been fired. However, after connecting the loaded holes, if for any reason the holes cannot be fired immediately, all work shall cease within a radius of three hundred (300) feet of the blasting area and work shall not commence again until the holes have been fired. not commence again until the holes have been fired or all holes disconnected.

(e) The firing of holes shall be conducted during daylight hours.

(f) After a blast the blaster shall examine the area and pronounce it safe before others enter. Every reasonable effort shall be made to fire loaded holes on the shift they are loaded. However, if loaded holes must be left over night the following safeguards shall be utilized:

1. As a practice, connected holes shall not be left overnight unless emergency conditions exist (example: electrical storms) that do not allow the shot to be detonated. No persons shall be permitted within three hundred (300) feet of the blast area where connected loaded holes could not be detonated as planned.

2. The blaster, in conjunction with the certified foreman, shall properly designate the area affected by unfired holes (connected/unconnected). Barriers (cones and flagging) and signs, or a person physically present shall prevent personnel and/or equipment from entering the affected area.

3. The location of the unfired loaded holes shall be documented in the pre-shift/on-shift examination book.

4. All personnel on affected shifts shall know the route in which to travel to a safe location in the event unforeseen circumstances (electrical storms, unstable highwalls, etc.) arise while working in the area of unfired loaded holes.

(g) When loading boreholes containing water, or if loaded holes are to be left for an extended period of time, sufficient slack in downlines shall be provided to prevent stretching and possible damage to downlines due to settling of material in the borehole.

(h) When drilling and blasting in areas where underlying coal seam(s) are burning, or suspected of burning, a plan outlining safeguards to be provided for the protection of workers shall be submitted for approval to the West Virginia Office of Miners' Health, Safety and Training and made available to an authorized representative of the miners. Such drilling and blasting shall not commence until approval is granted.

32 15.7. Post firing.

(a) Shooting cables shall be disconnected immediately from the blasting unit after each blast and shunted. The firing lines/lead lines shall be disconnected from the electrical power source immediately after each blast when electric or electronic detonators are used.

(b) No person shall return to the area where blasting has been performed until the dust has settled and the area cleared of smoke. The blaster shall not return to the area where blasting has been performed until the dust, smoke and fumes have cleared.

(c) After a blast, the blaster shall examine the area and pronounce it safe before others enter the blast area.

32 15.8. Misfires.

(a) When electric blasting caps have been used the blaster or no other person shall not return to misfired holes for at least fifteen (15) minutes. When a misfire is detected, no persons shall return to the misfired holes for at least fifteen (15) minutes. Misfires shall be handled only by a designated blaster in the presence of the mine/pit foreman.

(b) When a shot has misfired, extra precaution shall be taken in the handling of the misfires. If a misfire is detected, the blaster and the foreman in charge shall determine the necessary action to be taken to safely correct the situation. For those surface mines that do not employ five or more persons in a period of twenty-four hours and that do not have a certified mine foreman, the mine operator shall designate a competent person, as defined in 56 CSR § 3.3.87, to perform the duties of the foreman in charge set forth in this section. The name of the designated competent person shall be recorded and such record shall be made available upon request.

(c) The blaster shall wait thirty (30) minutes before returning to a misfired shot, when using blasting caps and fuse. When misfired/unfired explosives exist, or are suspected to exist, all persons working in the area shall be notified and given instructions on proper handling of possible undetonated explosives. The location of these holes shall be recorded in the pre-shift/on-shift book.

(d) After shooting a misfired shot, the blasting cable shall be disconnected from the source of power and the battery end short circuited before electric connections are examined. Immediately after firing a misfired shot, the firing/lead lines shall be disconnected from the firing device or blast controller when electric or electronic detonators are used. When using electric detonators, the ends of the firing/lead lines shall also be shunted.

(e) If explosives or blasting agents are suspected of burning in a hole, all persons in the blasting area shall move to a safe location and no person shall return to the hole for at least one (1) hour.

~~32~~ 15.9. Storage of explosives.

(a) After loading boreholes all unused explosives shall be returned to the proper explosive storage magazine.

(b) Separate surface magazines shall be provided for storage of explosives, detonators, and blasting heater elements. Surface magazines shall be constructed of incombustible material exposed inside the magazine. Surface magazines shall be provided with doors constructed of at least one-fourth (1/4) inch steel plate lined with a two (2) inch thickness of wood, or the equivalent, provided with adequate and effectively screened ventilation openings near the floor and ceiling, kept locked securely when unattended, posted with suitable danger signs so located that a bullet passing through the face of the sign will not strike the magazine. The location of the magazine shall not be less than two hundred (200) feet from any active work area, occupied buildings, or public roads unless barricaded. If magazines are illuminated electrically the lamps shall be of vapor-proof type, properly installed and wired. Smoking, open flames, open lights or spark-producing devices shall be prohibited in or within fifty (50) feet of a detonator or explosive magazine or facility.

(c) Explosives magazines shall be located at least one hundred (100) feet away from power lines and fuel storage areas.

(d) Cases or boxes containing explosives shall not be stored on their ends or sides in magazines nor stacked more than six (6) feet high.

(e) An area of twenty-five (25) feet around magazines shall be kept clear of dry leaves, grass, undergrowth, trash and debris.

(f) Detonator and explosives storage magazines shall be separated by at least twenty-five (25) feet.

(g) Ground rods shall be properly installed and secured on explosive storage magazines so as to provide sufficient electrical ground.

(h) Semitrailer van(s) used for highway or on-site transportation of blasting agents are satisfactory for storing these materials, provided they are located according to the American Table of Distance with respect to inhabited buildings, passenger railroads and public highways. Trailers will be provided with substantial means for locking, and the trailer doors shall be kept locked except during time of placement and removal of blasting agents.

~~§56-3-33~~ 16. Underground Workings.

33 16.1.

(a) The operator shall refrain from surface mining within five hundred (500) feet of any active and abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners: **Provided**, That the ~~d~~Director shall permit an operator to mine near, through or partially through an abandoned underground mine or closer to an active underground mine if: (a) the nature, timing and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities are coordinated jointly by the operators involved and approved by the Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training, and (b) such operations will result in improved resource recovery, abatement of water pollution or elimination of hazards to the health and safety of the public: **Provided**, That any breakthrough which does occur shall be sealed.

(b) The official representative of any known underground mine shall be notified immediately when a surface mine operation may in any way interfere with the safe operation of the active underground mine.

(c) Special precautions shall be taken to protect the employees where excavating is being performed in the vicinity of a known abandoned underground mine which may contain a dangerous accumulation of water and/or gas.

(d) All cut-throughs into underground mine workings shall be closed immediately.

§56-3-34 17. Haulage.

34-17.1. Roads - traffic directions and warning signs.

(a) Traffic directions which differ from standard highway practice shall be posted on signs along the haulage roads at strategic points in letters at least three (3) inches high.

(b) Well marked signs conspicuously placed, shall be properly located to alert drivers to existing danger areas. Such as the approach to a dangerous curve or extreme grade.

(c) Traffic rules, signals, and warning signs shall be standardized at each mine.

(d) Where side or overhead clearances on haulage roads or loading or dumping locations are hazardous to mine workers, such areas shall be conspicuously marked and warning devices shall be installed when necessary to insure the safety of the workers.

(e) Flashers, flares, or other means of signaling shall be used to warn approaching drivers of a hazard created by an obstruction in the roadway.

(f) Regulatory signs shall be used to indicate required method of traffic movement, (Example: "Stop", "Yield", "One Way".)

(g) Posted warning signs shall be used where necessary to indicate potential hazardous conditions. (Example: "Hill", "Curve", "Truck Crossing".)

(h) Object marking shall be used to mark physical obstruction in or near the haulage way that presents possible hazards. (Example: Reflectors and high visibility paint.)

(i) All signs and markings shall be displayed and utilized so as to be effective as possible.

(j) Where side or overhead clearance on any haulage road or at any loading or dumping location at a surface mine is hazardous to any person, such hazard shall be corrected immediately, and all necessary precautions taken while such hazard is being corrected.

34 17.2. Haulage roads - construction and maintenance.

(a) Haulage roads shall be located an adequate distance from highwalls and spoil banks to minimize the danger of falling material onto personnel and equipment.

(b) When dust created by haulage is thrown into suspension in such quantities that may obscure the vision of the operators of vehicles, and adequate means shall be taken to allay such dust.

(c) Only authorized persons shall be permitted on haulage roads and at loading or dumping locations.

(d) Berms or guards shall be provided ~~where required~~ on the outer bank of ~~elevating~~ elevated roadways.

(e) The width and grade to be utilized in haulage road construction shall be determined for each specific situation based upon terrain configuration, vehicle characteristics, and driver visibility for safe haulage.

(f) Haulage roads shall be constructed of sufficient width to permit the driver to maneuver his vehicle to avoid striking unexpected obstacles on the roadway where reclamation regulations permit.

(g) Provisions shall be made to adequately drain and remove excessive water from the haulage roads.

(h) Haulage roads shall be constructed, installed and maintained in a manner consistent with speed and type of haulage operations being conducted to insure safe operation. All roads leading to and from work sites on which persons are expected to travel to and from work or to haul coal or supplies, shall be of sufficient width and be maintained in good condition.

(i) Haulage operations shall be stopped when the haulage surface has deteriorated to the extent that it presents a danger to the safety of the haulage operation.

(j) ~~All haulage vehicles placed into service after the effective date of these rules and~~

~~regulations shall be equipped with an approved supplementary emergency braking system. When required by the Director or his authorized representative approved runaway roads or suitable equivalent shall be provided on all haulage roads on which coal is first hauled from such surface mine after the effective date of this section.~~

(k) All power lines constructed over haulage roads after the effective date of this section shall be maintained a minimum of twelve (12) feet above all equipment used on haulage roads including dump trucks in a raised position.

34 17.3. Haulage equipment - construction and maintenance.

(a) Haulage trucks shall not be operated with dirty windshields, cracked, dirty, or broken rear view mirrors.

(b) Supplies, materials, and tools other than small hand tools shall not be transported with persons in vehicles unless such vehicles are specifically designed to make such transportation safe.

(c) All new haulage vehicles placed into service shall be equipped with an emergency steering and braking system.

(d) Where required by the ~~d~~Director, trucks used for haulage of coal, men or supplies shall be equipped with two (2) way communication instruments.

(e) ~~Where required by the director or his authorized representative runaway roads or "J" roads shall be provided on all haulage roads on which coal is first hauled from such surface mine after the effective date of this section. All haulage vehicles placed into service after the effective date of these rules and regulations shall be equipped with an approved supplemental emergency braking system.~~

34 17.4. Haulage equipment - operation.

(a) Haulage truck operators shall make sure their truck path is unobstructed, especially when starting or moving the trucks forward or backward.

(b) Radio or visual contact shall be made with an operator of a haulage truck to insure that it is safe to approach the truck.

(c) Vehicles shall follow at a safe distance: passing shall be limited to areas of adequate clearance and visibility.

(d) Men shall not work or pass under the buckets or booms of loaders in operation.

(e) Drivers shall drive their trucks according to the condition of the road and the weather. At no time shall truck speeds exceed the safe predetermined speed limit that has been established on that haul road.

(f) Haulage trucks traveling in the same direction shall not pass any vehicle until signals have been exchanged between both drivers and the vehicle to be passed pulls to the right side of the road.

(g) Haulage trucks shall maintain a safe distance between the trucks they are following. Other vehicles shall maintain a minimum of one (1) car length for each ten (10) m.p.h. of travel in back of the vehicle they are following.

(h) When approaching a state or county road, drivers shall maintain their trucks under control to stop, yield right of way, or obey the signals of a flagman.

(i) When the body of a haulage unit is being raised, no person will be permitted in close proximity where they may be endangered.

(j) Materials or equipment required in the cab of haulage equipment shall be adequately secured.

(k) Operators of equipment used to haul coal exclusively or principally on mine permitted property shall possess a surface miner certification or an apprentice miner certification. Provided that, anyone performing these duties prior to the effective date of this regulation who possesses verification of more than six (6) months of employment and more than one hundred eight (108) shifts at a surface mine shall be granted a surface miner certification once he/she successfully completes the surface miner examination administered by the Office of Miners' Health, Safety and Training.

34 17.5. Parked vehicles.

(a) Lights, flares, or other approved warning devices shall be adequately located when parked equipment creates a hazard to vehicular traffic.

(b) Mobile equipment shall not be left unattended unless the brakes are set, ~~the~~. The wheels shall be turned into a bank or berm, or shall be blocked, when such equipment is parked on a grade.

34 17.6. Employee parking and mantrips.

(a) On all active surface mines, a designated area shall be provided for parking of employees' vehicles. All employees shall park their personal vehicles at the designated parking area. Adequate illumination shall be provided at all parking areas, and parking areas shall be maintained in good condition.

(b) No vehicle or other conveyance used to transport persons to and from work areas at surface mines shall be overcrowded and all persons shall ride in a safe position.

(c) All mantrips shall have ten (10) unit first aid kits, two-way communication, and audible warning devices, and equipped with strobe lights and/or whip antennae with florescent flag or equivalent.

§56-3-35 18. Auger Mining.

35 18.1. Proximity to underground workings.

(a) Auger mining should not be done in proximity to active underground workings unless the work is coordinated with the underground plan or workings. Auger holes should not be drilled so as to: (1) disrupt the ventilation systems of active underground mines; (2) create inundation hazards to active underground mines; and (3) cause damage to the roof and ribs of active and underground roadways.

(b) Auger holes should not intersect underground mine workings known to contain or suspected to contain dangerous quantities of impounded water, except to de-water such areas under controlled conditions and then only after all necessary precautions have been taken to safeguard life and property.

35 18.2. Safeguards - auger areas generally.

(a) Adequate approved means shall be provided to prevent unauthorized persons from entering areas where coal has been removed.

(b) Warning signs shall be posted conspicuously at the entrances to abandoned auger operations.

(c) Completed auger holes shall be blocked with highwall spoil to a minimum height of one (1) foot above the coal bed and to within one thousand (1,000) feet of the active holes.

(d) Adequate precautions shall be taken when any auger hole or holes are not blocked with highwall spoil to insure unauthorized entry.

(e) All haulroads entering auger pits shall be barricaded to insure against unauthorized vehicles when auger holes are left unguarded.

35 18.3. Protection of workers.

(a) No person or persons shall enter an auger hole until a qualified employee has determined by recognized means of detection whether the air within the hole is of good quality and does not contain methane or is deficient in oxygen. The examiner shall wear a lifeline that extends to the hands of a person on the surface.

(b) Persons entering an auger hole should examine and test its walls for danger from falling materials. Any hazardous conditions found should be corrected before any other work is done or the hole vacated and suitable danger boards placed across its entrance.

(c) Augers which are provided with walkways or platforms, where practicable shall be

equipped with safe handrails.

~~35~~ 18.4. Auger operations.

(a) Haulage trucks awaiting loading shall park a safe distance from the highwall and spoil bank.

(b) No person or persons other than the auger crew shall be allowed on or around the auger when in operation unless in line of duty.

(c) Only the truck being loaded and one (1) other truck shall be in the auger pit.

(d) Open lights and smoking materials are prohibited in auger holes.

(e) "No Smoking" signs shall be posted in close proximity where auger holes are being drilled.

(f) When auger holes first penetrate abandoned or mined out underground workings, and as frequently thereafter as these workings are penetrated a qualified employee should determine, by recognized means of detection, whether or not methane or oxygen deficient air is present or is being emitted in dangerous quantities.

(g) The operator shall not leave the controls while the auger is being operated.

(h) No person or persons shall be allowed to be on the top of the cab of the carriage engine for any reason while it is moving, or when the auger train is in motion.

(i) Partitions of coal between auger holes shall be adequate enough to support highwall when augering operations are being performed.

(j) Partitions of coal between auger holes shall not be recovered by other methods of mining without the approval of the Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training.

(k) Adequate illumination shall be provided for work areas after dark.

(l) Persons shall keep clear of the auger train while it is in motion and shall not pass under or over an auger train, except where suitable crossing facilities are provided. Persons shall keep clear of auger sections being swung into position.

(m) Where practicable, no persons shall be in a direct line with the boreholes during mining operations.

~~35~~ 18.5. Methane and oxygen.

(a) Auger mining equipment shall not be operated in the vicinity of auger holes emitting dangerous quantities of methane or air until the atmosphere has been rendered harmless.

(b) Internal combustion engines in the vicinity of auger holes shall be stopped while auger holes are being inspected.

(c) Combustible materials, dinner pails, or other supplies shall not be stored in auger holes.

(d) Auger mining machines shall be equipped with a permissible ~~flame safety lamp or other detector approved by the director~~ approved detector.

(e) In each auger mining crew there shall be a person qualified in the care and use of permissible ~~flame safety lamp or other approved~~ approved detectors ~~S oxygen detecting measuring device~~.

(f) Tests for oxygen deficiency shall be conducted with a permissible ~~flame safety lamp or other means~~ detector approved by the ~~d~~Director and all tests for methane shall be conducted with an approved ~~methane~~ detector.

(g) When an auger hole penetrates an abandoned or mined out area of an underground mine, tests for methane and oxygen deficiency shall be made at the collar of the hole by a qualified person, using approved devices to determine if dangerous quantities of methane or oxygen deficient air are present or being emitted. If such is found no further work shall be performed until the atmosphere has been made safe.

35 18.6. Inspections.

(a) Auger operators shall inspect their machine before starting and operating to determine such machine is in a safe operating condition and all safety equipment is provided.

(b) No work shall be performed under any overhang. When a crew is engaged in connecting or disconnecting auger sections for maintenance, repair, or other reasons besides regular operations, at least one (1) person shall be assigned to observe the highwall for possible movement.

(c) The face of all highwalls, for a distance of one hundred (100) feet on both sides of each drilling site, shall be inspected by the auger operator and the foreman before any augering operation is performed. All loose hazardous material shall be removed from the highwall before persons are permitted to enter the drilling area.

§ 56-3-19 Highwall Mining

19.1 General Precautions

(a) Highwall mining plans shall be formulated to minimize the possibility of the unplanned collapse of partitions between the miner entries. Partitions of coal between miner entries shall be adequate to support the highwall when mining operations are being performed.

(b) Highwalls shall be safely constructed to minimize danger to workers. Techniques such as (1) pre-splitting highwalls, (2) angle drilling, (3) safety benches and (4) scaling of loose/hazardous materials, brows, and overhangs may be implemented to enhance the safety of the highwalls.

(c) Adequate means shall be taken to allay coal dust being thrown into suspension in harmful or explosive quantities.

(d) Dust shall be controlled by the use of permissible dust collectors or other methods.

(e) The face of all highwalls, for a distance of one hundred (100) feet on both sides of the highwall miner, shall be inspected by the foreman before any mining operation shall be performed.

(f) The pit in which the highwall miner is being used shall be of a width to safely operate all equipment used during the mining process.

(g) Only persons authorized by mine management shall be allowed in the area where highwall mining is being conducted.

(h) Completed entries shall be blocked with highwall spoil to a minimum height of one foot above the highwall miner openings and to within one thousand (1000 feet) of the active workings. Adequate precautions shall be taken to insure against unauthorized entry when any highwall miner openings are not blocked.

(i) No smoking shall be permitted within one hundred fifty (150) feet of highwall miner openings. No smoking signs shall be conspicuously posted in the pit where the highwall miner is operating or in pits where highwall miner openings are present.

(j) Records and maps shall be kept showing the width, depth, spacing and typical height of all entries mined.

(k) At the close of the highwall mining operation, maps shall be submitted to the Office of Miners' Health, Safety and Training for map archiving purposes showing the records in 56 CSR § 3-19.1(k) in a manner such that the maps can be referenced to the West Virginia State Plane Coordinate System. Mining that has occurred after the effective date of these regulations shall be certified by a West Virginia Registered Professional Engineer. A combination of approximate and surveyed locations is permitted, so long as the certified map clearly denotes such.

(l) All maintenance on the continuous highwall miner shall be performed a safe distance away from the highwall. For continuous highwall miners equipped with canopy protection, the continuous highwall miner shall be pulled back under the canopy for servicing or routine maintenance.

(m) A portable fire extinguisher containing a nominal weight of at least five (5) pounds shall be kept on each piece of mobile equipment.

19.2 Proximity To Underground Workings

(a) Highwall mining shall not be performed within five hundred (500) feet of any active or abandoned mines without complying with 56 CSR § 3-16. Highwall mining shall not (a) disrupt the ventilation systems of the underground mines, (b) create inundation hazards to active underground mines, and (c) cause damage to the roof or ribs of active underground entries.

(b) In addition, highwall mining shall be conducted in accordance with 56 CSR § 3-16.1.

19.3 Proximity to Wells

(a) Highwall mining within two hundred (200) feet of any well, or into and through any well, shall be in accordance with W. Va. Code § 22A-2-75(b).

19.4 Protection Of Workers.

(a) No person(s) shall enter a highwall miner opening for any reason without written approval from the Office of Miners' Health, Safety & Training. No person(s) shall enter a highwall miner opening for any reason unless that person(s) possesses a valid West Virginia underground coal miner certificate. The operator must submit a plan for approval, and a copy made available to an authorized representative of the miners, that includes the following provisions:

(1) Written notification shall be submitted to the Office of Miners' Health, Safety & Training regional office. This notification shall include details of the specific problem and the reason(s) workers will have to enter the highwall miner opening.

(2) The operator shall submit a plan and must receive written approval from the Director or the Regional Supervisor of the Office of Miners' Health, Safety & Training, which will detail the precautions necessary to safely perform the duties involved.

(3) In order to safeguard workers, when anyone enters the highwall miner opening(s), all West Virginia underground mining laws and regulations shall apply.

(b) All travelways and work areas shall be maintained in good condition. Safe means of access shall be provided to all work areas of the highwall miner system.

(c) Adequate guarding shall be provided on all moving equipment parts where workers could be injured by movement of these parts.

(d) All persons working around a highwall miner shall wear protective clothing including, but not limited to, safety helmets and safety-toed boots.

(e) Adequate illumination shall be provided when the highwall miner system is operated in darkness or low visibility conditions.

(f) A positive audible or visible warning system shall be installed and operated to warn persons that conveyor equipment is to be started.

(g) Unguarded conveyors with walkways shall be equipped with emergency stop devices approved by the Director.

(h) Good visibility shall be provided for the highwall miner operator to the launch area of the machine.

(i) Two-way communication shall be provided between workers on the launch area and the highwall miner operator.

(j) Partitions of coal (web & barrier pillars) between the highwall miner openings shall not be recovered by other methods of mining without the written approval of the Director of the Office of Miners' Health, Safety & Training.

(k) Trailing cables shall be adequately protected to prevent damage.

(l) Mine operators shall require all people handling energized portable trailing cables to wear approved and tested insulated workmen's gloves. All such protective equipment shall be furnished by the operator. Rated gloves used when handling energized portable trailing cables shall be electrically tested every thirty (30) days and a record of that test shall be kept for one (1) year and made available to a representative of the Director and an authorized representative of the miners, upon request.

(m) All steps, handrails, walkways and platforms on the highwall miner shall be maintained in a safe condition. Employees shall be instructed and required to use access steps located at the rear of the launch when the highwall miner is in the mining position near the highwall. Handrails shall be provided for all elevated platforms and walkways.

(n) All highwall miners that are equipped with unguarded belt conveyance systems shall have panic lines/pull cords installed and in place directly beside the unguarded conveyor belt (belly belt) at all times when the belt is running and the highwall miner cars are not in position above the belt acting as a guard. When panic line/pull cords are detached to facilitate adding or removing highwall miner cars, workers shall follow a procedure that does not expose them to working above the running unguarded conveyor belt.

19.5 Operation Of Highwall Miners.

(a) No person or persons, other than the highwall miner crew, shall be allowed on or around the highwall miner when in operation unless authorized by mine management.

(b) The operator shall not leave the controls while the highwall miner is being operated. Before leaving the controls for any reason, the operator shall place controls in the neutral position and de-activate the controls to prevent accidental activation of the controls.

(c) No persons shall work under suspended loads. Where required, suspended loads shall be controlled with the use of tag lines or equivalent systems.

(d) Persons shall not cross over belt conveyance cars or unguarded conveyor belts while in motion. Persons shall keep clear of all conveyance system sections being swung, lowered, loaded or removed.

19.6 Methane And Oxygen

(a) Highwall mining shall not be conducted in the vicinity of highwall miner openings or auger holes emitting dangerous quantities of methane or oxygen deficient air, until the atmosphere has been rendered harmless.

(b) Internal combustion engines in the vicinity of highwall miner openings shall be stopped while the highwall miner entries are being inspected.

(c) No material or equipment shall be stored in highwall miner openings.

(d) All highwall mining operations shall have an approved and fully functional detector(s) capable of measuring oxygen deficiencies and methane levels on site. There shall be at least one (1) person qualified in the care and use of the approved detecting/measuring device(s). All tests for oxygen deficiency and methane will be conducted with approved detectors.

(e) If at any time methane levels of one (1) percent or greater are detected, mining shall cease until the methane levels are reduced to levels less than one (1) percent.

(f) When a highwall miner opening penetrates an abandoned mine or mined out area(s) of an underground mine, mining shall cease immediately and tests for methane and oxygen deficiency shall be made at the highwall miner opening by a qualified person using an extendable probe. These tests shall be made using approved devices to determine if dangerous quantities of methane and/or oxygen deficient air are present or being emitted. If such is found, no further work shall be performed until the atmosphere is made safe.

(g) The highwall miner shall be equipped with a monitoring device that will alert the operator when methane levels reach concentrations of 1.0%, at which time the cutter head will be lowered and the machine shut down. All launch workers, except the person necessary to conduct a methane examination, shall be removed from the immediate area and a methane examination will be

conducted at the highwall miner opening. Methane levels will be tested at the highwall miner opening with an extendable probe. When the test at the highwall miner opening cannot detect significant levels of methane and the mining machine monitor indicates that methane accumulation has dispersed, work may resume. In the event the miner is de-energized when the methane monitor detects 2.0% methane or a 1.0% reading continues for a sustained amount of time, all underground equipment will be de-energized and removed by hydraulic cylinders or other means outside the opening. The opening that was being mined will be abandoned at this time.

(h) All methane examinations will be recorded in the examination book maintained by the supervisor, along with necessary explanations. Methane monitors will be visually inspected prior to the start of each new entry. Methane monitors will be tested monthly, using manufacturers test apparatus.

19.7 Highwall Miner Cable Reels

(a) All cable reels shall be guarded or positioned to prevent persons from being injured when the reel is operated.

(b) At no time shall persons position themselves in front of the cable reels on top of the system while the system is in operation except when the following guidelines are followed:

(i) The reels are being controlled from the top level with visual contact with all persons on the top deck.

(ii) If the cable guide malfunctions, efforts shall be made to start repairs as soon as possible.

(iii) All persons that are required to work in this area shall be made aware of the malfunction.

(iv) At no time shall any person hand guide cables onto the cable reels.

§56-3-36 20. General Provisions.

36 20.1. Horseplay - Horseplay, practical jokes, wrestling, fighting or other actions which threaten persons with personal injury, causing them to fear for their personal safety or causing damage resulting in interference with safe operations shall be prohibited.

36 20.2. Alcohol and drugs - Persons under the influence of alcohol or drugs shall not be permitted on a surface mine or attendant facility.

36 20.3. Housekeeping - Paths, walkways, stairways, and roadways shall be kept free of obstructions. Structures and inside work areas shall be kept free of oil, coal spillage, litter, and coal dust accumulations.

36 20.4. Smoking - Smoking or open flames shall not be permitted in the following areas:

Within 50 feet of the area where explosives are being stored, handled, or used storage area;

Within 150 feet of flammable liquid storage areas;

Within 150 feet of liquified and nonliquified gas storage areas;

Within 150 feet of the proximity of auger holes.

36 20.5. Compressed air or gases.

(a) Safety chains or suitable locking devices shall be used at connections to machines or high-pressured hose lines. ~~where a connection failure would create a hazard.~~

(b) Compressors and compressed-air receivers shall be equipped with automatic pressure relief valves, pressure gauges, and drain valves.

(c) All hoses exceeding one-half (1/2) inch inside diameter shall have a safety device at the surface of supply at the branch line to reduce pressure in case of hose failure.

36 20.6. No working alone - No person shall be assigned, or allowed, or be required to perform work alone in any area where hazardous conditions exist that would endanger his safety unless he can communicate with others, can be heard, or can be seen.

36 20.7. Stockpiles - Coal shall not be stockpiled at or near exposed or buried gas lines.

36 20.8. Reclaiming hazards - No person shall be permitted to walk or stand immediately above a reclaiming area at or near a slurrage or storage pile where the reclaiming operations may expose him to a hazard.

20.9. Toilet facilities - Each operator of a surface mine shall provide at least one sanitary toilet in a location convenient to each surface work site. All sanitary toilets shall be regularly maintained in a clean and sanitary condition.

20.10. Drinking water - An adequate supply of potable water shall be provided by the mine operator for drinking purposes in each surface installation and at each surface worksite of the surface mine. Water transported to all work sites shall be carried, stored and otherwise protected in sanitary containers.

20.11. Persons entering a mine - Only persons authorized by the mine operator shall be permitted to enter a surface mine. The mine operator shall develop a plan to account for those authorized persons while at the surface mine. The plan shall be available to a representative of the Director upon request.

§56-3-37 21. Electricity.

37 21.1. Performance of electrical work.

(a) No electrical work shall be performed on low-, medium-, or high-voltage distribution circuits or equipment, except by a qualified person or by a person trained to perform electrical work and to maintain electrical equipment under the direct supervision of a qualified person. Disconnecting devices shall be locked out and suitably tagged by the person who performs such work, except that in cases where locking out is not possible, such devices shall be open and suitably tagged by such person. They shall be removed only by the person who installed them or if such person is unavailable, by a qualified person authorized by the operator or his agent. Suitably tagged, as used in these sections, means that a sign such as, "Danger, Hands Off, Do Not Close, Men Working On Line", shall be attached to the locked switches. The signs or tags shall bear the name, date, and certification of the workman who installed the tag. Keys used to lock out switches shall be kept only on the person who is performing the work on the equipment and his immediate supervisor. Such locks shall be provided by the operator.

(b) All power circuits and electrical equipment shall be de-energized before work is performed on such circuits and equipment, except when necessary for troubleshooting or testing.

37 21.2. Transformers.

(a) All surface transformers, unless of the construction which will eliminate shock hazard, or unless installed at least eight (8) feet above ground, shall be enclosed in a house or surrounded by a fence at least six (6) feet high. If the enclosure is of metal, it shall be grounded effectively, the gate or door to the enclosure shall be kept locked at all times, unless authorized persons are present.

(b) Transformers shall be provided with adequate overload protection.

(c) "Danger - High Voltage" signs with voltage indicated shall be posted conspicuously at all transformer enclosures, high potential switch boards, and other high potential installations.

(d) Ground fields shall be installed and maintained at a resistance not to exceed five (5) ohms.

37 21.3. Electrical equipment generally.

(a) Capacitors used for power factor connections shall have suitable drain off resistors or other means to protect workmen against electrical shock following removal of power.

(b) Dry insulated platforms of rubber or other suitable nonconductive material shall be kept in place at each switchboard and at stationary machinery where shock hazards exist.

(c) Reverse current protection shall be provided at storage battery charging stations to prevent the storage batteries from energizing the power circuit in the event of power failure.

(d) All electric conductors shall be sufficient in size and have adequate current carrying capacity and be of such construction that a rise in temperature resulting from normal operation will not damage the insulating materials. In no case will the requirements be less than set forth in the ~~current~~ National Electric Code in effect at the time of installation.

(e) All electrical connections or splices and conductors shall be mechanically and electrically efficient and suitable connectors shall be used. All electric connections or splices and insulating wires shall be reinsulated at least to the same degree of protection as the remainder of the wire. Splices made shall provide continuity of all components.

(f) All power wires, except portable trailing cables on mobile equipment, specially designed cables conducting high voltage power shall be supported on well installed insulators and shall not contact different potential passes within eighteen (18) inches of each other, such cables shall be insulated to the potential of the highest voltage wire or cable.

(g) All electrical equipment shall be provided with switches or controls that are safety designed, constructed, and installed. Power cable, trailing cable or conductor couplings or connections cannot be connected or disconnected while under load.

(h) Single phase loads such as transformer primaries shall be connected phase to phase.

~~37~~ 21.4. Testing maintenance and repair of electrical equipment.

(a) All electrical equipment, except circuit breakers, shall be examined daily, by a competent person to assure safe operating condition. All electrical equipment shall be examined monthly, tested and properly maintained by a certified electrician. When a potentially dangerous condition is found on electrical equipment, such equipment shall be removed from service until the condition is corrected by a certified electrician. A record of such examination and the action taken when the potentially dangerous condition is found shall be kept and made available to an authorized representative of the Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training and to the miners at such mine.

(b) Circuit breakers and their auxiliary devices shall be tested and examined at least once each month by a qualified person and a record of such examination shall be kept and made available to an authorized representative of the ~~d~~Director and to the miners at such mine. Circuit breaker tests shall include:

(1) Breaking continuity of the ground check conductor where ground check monitoring is used.

(2) Actuating all of the auxiliary protective relays, and;

(3) Visual observation of all components of the circuit breaker and its auxiliary devices.

Such repairs or adjustments as are indicated by such tests and examination shall be carried

out immediately.

37 21.5. Circuit breakers.

(a) Automatic circuit breaking devices or fuses of the correct type and capacity shall be installed so as to protect all electrical equipment and circuits against short circuit and overload. Three (3) phase motors on electrical equipment shall be provided with overload protection that will de-energize all three (3) phases in the event that any phase is overloaded. As used in this section, adequate current interrupting capacity requires that the fuse or circuit breaker is capable of interrupting the maximum short circuit current that the circuit may conduct without destruction to the device.

(b) Electric equipment shall be provided with devices that will permit the equipment to be de-energized quickly in the event of an emergency.

(c) One (1) circuit breaker may be used to protect two (2) or more branch circuits if the circuit breaker is adjusted to afford over-current protection for the smallest conductor.

(d) When not in use, power circuits shall be de-energized on idle days and idle shifts except that rectifiers and transformers may remain energized.

(e) Power circuits serving three (3) phase alternating current equipment serving portable or mobile equipment shall be protected by suitable circuit breakers of adequate interrupting capacities which are properly tested and maintained as prescribed by the dDirector. Such breakers shall be equipped with devices to provide protection against under-voltage, grounded phase, and short circuit protection, and over current.

(f) Disconnecting devices shall be installed at the beginning of branch lines in high voltage circuits and equipped or designed in such a manner that it can be determined by visual observation that the circuit is de-energized when the switches are open.

(g) Circuit breakers and disconnecting switches shall be marked for identification.

37 21.6. Cables.

(a) Cables shall enter metal frames of motors, splice boxes and electrical compartments only through proper fittings. When insulated wire, other than cables, pass through metal frames, the hole shall be substantially bushed with insulated bushings. Cables and power wires, including, but not limited to, telephone communication and control wires, shall be insulated adequately and fully protected.

(b) Trailing cables shall be clamped to machines in a manner to protect the cables from damage and to prevent strain on the electrical connections. No cable will be hung in a manner which will damage the insulation or conductors.

(c) Trailing cables shall be adequately protected to prevent damage by mobile equipment.

(d) Short circuit protection for trailing cables shall be provided by an automatic circuit breaker or other no less effective device, approved by the ~~d~~Director, of adequate current interrupting capacity in each ungrounded conductor. Disconnecting devices used to disconnect power from trailing cables shall be plainly marked and identified and such devices shall be equipped or designed in such a manner that it can be determined by visual observation that the power is disconnected and shall be labeled to show which unit they control.

(e) Cable couplers shall be constructed so that the ground check continuity conductor shall be broken first and the ground conductor shall be broken last when the coupler is being uncoupled.

(f) When two (2) or more trailing cables junction to the same distribution center, means shall be provided to assure against connecting the trailing cable to the wrong size circuit breaker.

(g) One temporary splice may be made in any portable trailing cable. Such trailing cable may only be used for the next twenty-four (24) hour period. Temporary splices in trailing cables shall be made in a workmanlike manner and shall be mechanically strong and well insulated. Trailing cables or hand cables which have exposed wires or which have splices that heat or spark under load shall not be used. As used in this section, the term splice means a mechanical joining of one (1) or more conductors that have been severed.

(h) When permanent splices in trailing cables are made, they shall be:

- (1) Mechanically strong with adequate electrical conductivity and flexibility;
- (2) Effectively insulated and sealed so as to exclude moisture;
- (3) Vulcanized or otherwise treated with suitable materials to provide flame-resistant qualities and good bonding to the outer jacket, and;
- (4) Made in accordance with the manufacturers specifications.

(i) Trailing cables for medium voltage circuits shall include grounding conductors, a ground check conductor, and grounded metallic shields around each power conductor or a grounded metallic shield over the assembly, except that on equipment employing cable reels, cables without shields may be used if insulation is rated two thousand (2,000) volts or more.

~~37~~ 21.7. Grounding.

(a) All metallic shields, armors and conduits enclosing power conductors will be electrically continuous throughout and shall be grounded by method approved by an authorized electrical representative of the ~~d~~Director. Where grounding wires are used to ground metallic shields, armors, conduits, frames, casings and other metallic enclosures, such grounding wire will be approved if:

(1) Where the power conductor used is #6 A.W.G. or larger, the cross sectional area of the grounding wire is at least one-half (1/2) the cross sectional area of the power conductor.

(2) Where the power conductor used is less than #6 A.W.G., the cross sectional area of the grounding wire is equal to the cross sectional area of the power conductor.

(b) The attachment of grounding wires to other grounded power conductors will be approved if separate clamps, suitable for such purpose, are used and installed to provide a solid connection.

(c) Metallic frame, casing, and other enclosures of electrical equipment that can become alive through failure of insulation or by contact with energized parts shall be grounded, and shall have a ground monitoring system, to monitor continuously the grounding circuit, to assure continuity, such ground check circuit shall cause the circuit breaker to open when either the ground or pilot check wire is broken, or other not less effective device approved by the ~~el~~Director or his authorized electrical representative, to assure such continuity, except a temporary waiver may be permitted by the Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training, on a mine to mine basis if he determines that such equipment is not available.

(d) In instances where single phase one hundred ten (110)-two hundred twenty (220) volt circuits are used to feed electrical equipment, the only method of grounding that will be approved is the connection of all metallic frames, casings or other enclosures of such equipment to a separate grounding conductor which established a continuous connection to a grounded center tap of the transformer.

(e) Where batteries are being charged without removing them from mobile equipment, or are sitting on wooden blocks, the frames of the machine or battery case shall be grounded to the grounded frame of the charger to prevent the machine from becoming alive through failure of insulation in the charger. All ground conductor connections shall be clamped or bolted connections.

(f) All buildings and structures shall be earth grounded if they are constructed of metal. Also, any building or structures which could become alive with electrical energy shall be effectively grounded.

(g) Guy wires from poles supporting high voltage power lines shall be securely connected to the system grounding medium or shall be provided with insulators rated at the highest voltage installed ~~near the pole end~~ as required below phase conductors of the high voltage power line.

(h) At preparation plants, shop areas, surface mines, and all other surface areas, 120/240 volt AC circuits used to power electrical devices in wet locations shall be protected with ground fault circuit interrupting devices.

37 21.8. Energized lines generally.

(a) All guy wires shall be marked or flagged when equipment is working in the area.

(b) Energized power lines crossing an access road or work area shall be identified by warning signs visible from each direction. Warning signs shall include height of lines for clearance and made of reflective material. In no event shall any high voltage power line be installed less than fifteen (15) feet above ground, walkways, or working areas.

(c) All equipment near energized power lines with the following voltages shall maintain the following clearances: one hundred (100) to sixty-nine thousand (69,000) - ten (10) feet; sixty-nine thousand (69,000) to one hundred fourteen thousand (114,000) - twelve (12) feet; one hundred fifteen thousand (115,000) to two hundred twenty-nine thousand (229,000) - fifteen (15) feet; two hundred thirty thousand (230,000) to three hundred forty-four thousand (344,000) - twenty (20) feet; three hundred forty-five thousand (345,000) to four hundred ninety-nine thousand (499,000) - twenty-five (25) feet; five hundred thousand (500,000) or more - thirty-five (35) feet.

(d) All personnel, except those directly involved in the operation, shall stay clear of the equipment working near energized lines.

(e) If equipment comes in contact with an energized line, the operator shall stay in the equipment until notified by a certified electrician or foreman that the line is de-energized.

(f) All electrical wiring and equipment ~~installed~~ shall meet the requirements of the ~~current~~ National Electrical Code in effect at the time of installation.

37 21.9. High voltage.

(a) High voltage lines on the surface shall be de-energized, locked out, tagged out, and grounded before work is performed on them, except that repairs may be permitted, in the case of energized surface high voltage lines, if such repairs are made by a qualified person in accordance with the procedures and safeguards, including, but not limited to, a requirement that the operator of such mine provide tests, and maintain protective devices in making such repairs. No work shall be performed on any high voltage line on the surface which is supported by any pole or structure which also supports other high voltage lines until all lines supported on that pole are de-energized and grounded.

(b) No high voltage lines shall be regarded as de-energized for the purpose of performing work on it until it has been determined by a qualified person that such high voltage line has been de-energized and grounded. Such qualified person shall, by visual observation, determine that the connecting devices on the high voltage circuit are in open position and insure that each ungrounded conductor of the high voltage circuit upon which work is to be done is properly connected to the system grounding medium.

(c) An energized high voltage line may be repaired only when the operator has determined that such repairs cannot be scheduled during periods when the power circuit could be properly de-energized and grounded. Such repairs will be performed on power circuits with a phase to phase nominal voltage no greater than fifteen thousand (15,000) volts. The weather conditions shall be noted so that it would not interfere with such repairs or expose those persons assigned to such work

to an imminent danger. The operator shall designate a person qualified to perform such work as the person responsible for carrying out such repairs. In order to insure protection for himself and other interested persons assigned to perform such repairs from the hazards of said repairs, he must prepare and file with the operator; (1) a general description of the nature and location of the damage or defect to be repaired; (2) the general plan to be followed in making of such repairs; (3) a statement that a briefing of all qualified persons assigned to make such repairs was conducted informing them of the general plan, their individual assignments, and the dangers inherent in such assignments; (4) a list of proper protective equipment and clothing that will be provided and such other information as the person designated by the operator feels necessary to describe properly the means or methods to be employed in such repairs. All statements obtained by the operator shall be recorded and contain a notation of the time, date, location and general nature of the repairs.

(d) When two (2) or more persons are working on an energized high voltage surface line simultaneously and anyone of them is within reach of another, such persons shall not be allowed to work on different phases or equipment with different potentials.

(e) All persons performing work on energized surface high voltage lines shall wear protective rubber lineman's gloves, sleeves, and climber guards if climbers are worn. Protective rubber gloves shall not be worn wrong side out or without protective leather gloves. Protective devices worn by a person assigned to perform work on high voltage surface lines shall be worn continuously from the time he leaves the ground until he returns to the ground and if such devices are employed for extended periods, such persons shall visually inspect the equipment assigned him for defects before each use and in no case, less than twice each day.

(f) All rubber protective equipment used for work on energized high voltage surface lines shall be electrically tested by the operator in accordance with ASTM Standards, part 28 published February, 1968.

(g) Disconnecting or cutout switches on energized high voltage surface lines shall be operated only with insulated sticks, fuse tongs or pullers which are adequately insulated and maintained to protect the operator from the voltage to which he is exposed. When such switches are operated from the ground, the person operating such devices shall wear protective rubber gloves.

(h) No new additional circuits may be tied to a high voltage surface line when such line is energized.

(i) Solely for purposes of grounding ungrounded high voltage power systems, grounded messenger wires used to suspend the cable of such system may be used as a grounding medium.

(j) All high voltage circuits supplying portable, mobile or stationary equipment shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the source transformer and a grounding circuit originating at the grounded side of the grounding resistor shall extend along the power conductors and serve as a grounding conductor for the frames which receives power from that circuit. The grounding resistor shall be of the proper ohmic value to limit the voltage drop in the grounding circuit external to the resistor to not more than one hundred (100) volts

under fault conditions, the grounding resistor shall be rated for maximum volt current continuously and insulated from ground for a voltage equal to the phase to phase voltage of the system.

(k) High voltage resistant grounded system serving portable or mobile equipment shall include a fail safe ground check circuit to monitor continuously the grounding circuit to assure continuity and the fail safe ground check circuit shall cause the circuit breaker to open when either the ground or pilot check wire is broken or other no less effective device approved by the dDirector or his authorized representatives to assure such continuity.

(l) High voltage cables used in ~~resistant~~ resistance grounded systems shall be equipped with metallic shields around each power conductor with one (1) or more ground conductors having a total cross sectional area of not less than one-half (1/2) the power conductor and with an insulated internal or external conductor not smaller than #10 A.W.G. for the ground continuity check circuit if required.

37 21.10. Movement of electrical equipment.

(a) Power centers, portable transformers, cable couplings and enclosures shall be de-energized before they are moved from one (1) location to another. Except that when equipment powered by source other than such centers or transformers is not available the dDirector may permit such centers or transformers to be moved while energized if he determines that such equivalent or greater hazard may otherwise be created and if they are moved under the supervision of a qualified person, and if such centers and transformers are examined prior to such movement by such person and found to be grounded by methods approved by an authorized representative of the dDirector and otherwise protected from hazard to the miner. A record shall be kept of such examination.

(b) High voltage cables other than trailing cables shall not be moved or handled at any time while energized as permitted under this section.

(c) ~~Energized high voltage trailing cables may be moved only by a qualified person and the operator of such mines shall require that such person wear approved and tested insulated workmen's gloves. Mine operators shall require all people handling energized portable trailing cables to wear approved and tested insulated workmen's gloves. All such protective equipment shall be furnished by the operator. Rated gloves used when handling energized portable trailing cables shall be electrically tested every thirty (30) days and a record of that test shall be kept for one (1) year and made available to a representative of the Director upon request. If straps or hooks are used, those straps and hooks shall be non-conductive and designed for that purpose.~~

37 21.11. Other electrical apparatus or areas.

(a) Ladders for electrical work shall be of nonmetal type.

(b) No electrical machinery or apparatus shall have unguarded exposed energized parts.

(c) Lighting plants shall be located so as not to obstruct or be a safety or health hazard to any part of the mining operation or miners.

(d) Employees performing work that requires them to come in contact with electrical equipment involving shock hazards shall be provided with suitable insulating gloves. Suitable insulation shall be of approved type that will protect such person from voltage to which he is exposed. All such protective equipment shall be furnished by the operator.

(e) Rooms in which circuit breakers or controls are installed shall have two (2) separate and distinct travelable passageways, designated as escapeways.

(f) Open flame in or about surface structures shall be restricted to locations where it will not cause fire or an explosion.

(g) All lights with less than eight (8) feet overhead clearance shall be guarded and the lamps be installed in weatherproof sockets. Lamps installed in a hazardous area must be of substantial construction and fitted with a glass enclosure.

(h) A ten (10) pound fire extinguisher shall be provided for each permanent electrical installation.

§56-3-38 22. Hand-Held Electric Drills and Rotating Tools; ~~Trailing Cables~~.

~~38~~ 22.1. Electric drills and other electrically operated rotating tools intended to be held in the hand shall have the electric switch constructed so as to break the circuit when the hand releases the switch or shall be equipped with friction or safety clutches.

§56-3-39 23. Installation of Lighting.

~~39~~ 23.1. Electric lights or other approved methods of lighting shall be installed so that they do not come in contact with combustible materials, and the wires shall be supported by suitable insulators and fastened securely to the power conductors.

§56-3-40 24. Compressed Gases and Welding.

~~40~~ 24.1. Handling and use of welding or cutting equipment generally.

(a) The clothing of any person using any welding or cutting equipment in or about a surface mine shall be reasonably free of petroleum products. When handling oxygen cylinders or apparatus the use of oily hands or gloves is prohibited.

(b) Compressed gases shall not be used under direct pressure from tanks or cylinders but must be used under reduced pressures not exceeding that recommended by the manufacturers.

(c) At no time shall compressed air be directed toward a person when in use.

(d) A suitable wrench designed for compressed tanks shall be in the possession of the person authorized to use the equipment.

(e) Oxygen and gas cylinders and their contents shall be used solely for their intended purposes.

(f) Only an approved type spark-lighter shall be used for lighting torches.

(g) All welding and cutting equipment shall be continuously maintained in a safe condition.

40 24.2. Storage of compressed gas cylinders.

(a) Cylinders shall be securely stored in an upright position with valve protection caps hand tight. The storage area shall be well ventilated, protected and at least twenty (20) feet from highly combustible materials such as oil or other flammables.

(b) Signs at storage areas of cylinders shall be conspicuously posted, "Danger No Smoking, Matches or Open Flame".

(c) When storing oxygen cylinders and acetylene or other fuel gas cylinders inside buildings, a minimum distance of twenty (20) feet or a noncombustible barrier at least five (5) feet high having a fire resistance rating of at least one-half (1/2) hour shall be maintained between the oxygen cylinders and other fuel gas cylinders.

40 24.3. Transportation of compressed gas cylinders.

~~(a) When tanks and cylinders are not used and they are being transported, valve protection caps shall be placed on all tanks or cylinders. Oxygen tanks, gas tanks, or cylinders shall not be transported with the hoses or gauges attached.~~

~~(b)~~ (a) When transporting cylinders, they shall be securely mounted with regulators removed, cylinder valves closed and protective valve caps replaced except in conformance with the provisions of 36 CSR 27-11.1(a) through (h).

~~(c)~~ (b) Gas cylinders shall not be transported on vehicles used to transport employees unless separate approved compartments are provided.

40 24.4. Welding preparations.

(a) Person or persons assigned to use and work with welding and cutting tools shall be properly instructed of their uses and fully understand the danger of their misuse.

(b) All persons welding, cutting, heating, brazing or soldering shall be provided with goggles or shields, gloves, safe type spark-lighter and proper torch tip cleaner.

(c) Prior to welding, cutting, heating, brazing or soldering in areas likely to contain methane, an examination shall be made by a qualified person with an approved device. Examinations for methane shall be made immediately before and periodically during welding, cutting, heating, brazing or soldering and such work shall not commence or continue in air which contains one percent (1%) or more methane.

(d) Welding operations shall be shielded when necessary and the area shall be well ventilated.

(e) Fire watchers shall be used whenever welding, cutting, heating, brazing or soldering is performed at locations where a fire hazard exists.

(f) Adequate fire protection shall be provided at the location where welding, cutting, heating, brazing and soldering is performed.

~~40~~ 24.5. Acetylene welding.

(a) Only approved apparatus such as torches, regulators, pressure reducing valves, hoses, back flow check valves and gas cylinders shall be used.

(b) Back flow check valves shall be attached to the exhaust side of a regulator before using.

(c) Repairs involving the pressure system of compressors, receivers, or compressed-air-powered equipment shall be prohibited until the pressure has been relieved from the part of the system to be repaired.

(d) Gas cylinders shall be protected from contacting sparks, hot slag or flame during welding, cutting, heating, brazing or soldering.

(e) Regulators shall be adequately attached to the cylinders before using their contents.

(f) The cylinder valve shall be opened partially for an instant, then closed before connecting a regulator. Such person performing said act shall stand to one (1) side (not in front) of the outlet when opening the cylinder valve.

(g) When removing a regulator from a cylinder bottle valve, such valve shall be closed and the gas released from the regulator.

(h) Empty cylinders shall be marked as such and removed from the work area immediately.

(i) Oxygen and acetylene tanks or cylinders or compressed gases shall be protected from power lines or energized electrical machinery or equipment. These tanks or cylinders shall be kept away from the place where the cutting is being done in order to prevent damage or accident and to prevent heat from affecting such tanks or cylinders.

40 24.6. Electrical welding.

- (a) All connections at the welding machine shall be checked before starting such operations.
- (b) The ground lead shall be adequately attached to the work.
- (c) Magnetic work clamps shall be free of adherent metal particles or spattex on contact surfaces.
- (d) Coiled welding cable shall be adequately separated to avoid serious overheating and damage to cable insulation.
- (e) The welding machine frame shall be adequately grounded.
- (f) The welding machine shall be free of leaks, cooling water, shielding gas and engine fuel.
- (g) Proper switches shall be provided for de-energizing the welding machine.
- (h) Electrode holders shall be located so they do not make electrical contact with persons, conducting objects, fuel or compressed gas cylinders. Energized electrode holders may be laid down or placed only in approved nonconductive trays or holders.
- (i) There shall be splice-free cables within ten (10) feet of the electrode holder.
- (j) The welding cable shall not coil or loop around parts of the welder's body.
- (k) When welding has ceased for any substantial period of time, all electrodes shall be removed from holders. Holders shall be located so that accidental contact cannot occur.
- (l) Where work permits, arc welders shall be enclosed by individual booths or non-combustible screens painted with a finish of low reflectivity such as zinc oxide or lamp black.

40 24.7. Safety Hazards.

- (a) Welding, cutting, and burning shall be prohibited in dusty areas.
- (b) After welding operations, the area where metal particles could come into contact with other workers, shall be posted with signs to provide warning.
- (c) Welders shall report any equipment defect or safety hazard to their supervisor and discontinue welding until safety has been assured.
- (d) When welding machines are used to provide an external power source, the welding machine's 120/240 volts AC receptacles shall be provided with ground fault circuit interrupting protection.

40 24.8. Maintenance and repairs.

(a) Cylinders, valves, couplings, regulators, hoses and apparatus shall be kept free from oil, dirt, greasy substances, and maintained in good condition.

(b) Test for leaks on hoses, valves, or gauges shall be made with a soft brush and soapy water or soap suds.

(c) Welding machines, electrodes, and cables shall be examined weekly for wear and/or damage.

§56-3-41 25. When Respiratory Equipment to be Worn; Control of Dust.

41 25.1. Men exposed for short periods to gas, dust, fume, and mist inhalation hazards shall wear permissible approved respiratory equipment. Dust shall be controlled by the use of permissible dust collectors or other approved equivalent methods.

§56-3-42 26 Nontitled.

42 26.1.

(a) Immediately prior to the beginning of each working shift, all equipment except licensed vehicles subject to state highway inspection requirements shall be examined by the equipment operator or a mechanic if designated by the foreman in charge of the operation daily for safety defects. The person performing such examination shall record his findings in ink or indelible pencil on a form approved by the ~~d~~Director; such form shall be given to the mine foreman or his assistant within four (4) hours after the beginning of the start of the working shift. The person performing the above examination shall sign the report form and the foreman receiving such form, shall initial upon receipt. A record of all above copy of all such examinations shall be maintained for thirty (30) days remain with the equipment for thirty (30) days and made available to an authorized representative of the ~~d~~Director and to the miners at the mine.

(b) Immediately prior to the beginning of each working shift, equipment operated by independent contractors ~~in the removal of coal and overburden~~ on a surface mine shall be examined by the equipment operator for safety defects. The person performing such examination shall record his findings in ink or indelible pencil on a form approved by the Director; such form shall be signed by the person performing the examination and such form shall remain with the vehicle for thirty (30) days and upon request be made available to an authorized representative of the Director.

(c) Imminent danger equipment defects shall be reported immediately to the mine foreman, tagged out, and corrected before the equipment is put into operation. The mine foreman shall record the defect in the pre-shift book prior to the beginning of the next shift.

(d) All mobile equipment shall be operated and maintained according to the manufacturer's

instructions.42 26.2. Operation of shovel, draglines, tractors, backhoes, loaders, etc.

(a) No person(s) shall enter the work area of any mobile equipment during operation until first making positive contact, either audible or visual, with the equipment operator(s). Equipment operators shall cease operating their equipment when any person is within such proximity as to be endangered.

(b) At startup or anytime mobile equipment is stopped, other than during the normal work cycle, Operators of shovels, draglines, and backhoes shall sound a signal distinguishable from the surrounding noise level such as a whistle, bell, horn or other approved device, before moving forward or backward, and all persons not in the clear shall respond immediately. Provided, passenger vehicles and light trucks are excluded from this requirement.

(c) Equipment operators shall not leave their cabs without lowering all raised equipment to the ground unless equipment failure is experienced.

(d) When the equipment operator is present, men shall notify him before getting on or off his equipment.

(e) Persons shall not be permitted in the immediate vicinity of shovels, draglines, and backhoes unless in the line of duty.

(f) Walkways and platforms on shovels, draglines and backhoes shall be maintained in a safe condition and shall be equipped with safe handrails, toe boards, walkways and platforms.

(g) Equipment that revolves in a horizontal arc on a turntable shall have a minimum clearance of four (4) feet from the highwall or other obstructions.

(h) The operator of shovels, draglines, and backhoes shall have a general knowledge of the location of his oiler at all times.

(i) Operators of shovels and draglines shall not leave their cabs to wet the digging brake or dog, unless the master clutch is in the "off" position. Operators of shovels and draglines shall have visual contact, when possible, with the person assigned to setting the digging brake or dog.

(j) Operators shall not leave the cab of the shovel, dragline or crane without placing the controls into the "Off" position. If the power should fail, the controls shall be placed in the "Off" position.

(k) All ropes shall be securely attached to the drum and the dipper by at least four (4) suitable wire rope clips or properly wedged. Drums shall have at least three (3) wraps of cable on at all times.

(1) Riding a dipper or bucket shall be prohibited.

42. 26.3. Maintenance and repairs.

(a) All safety equipment on all machinery shall be maintained in a safe working condition.

(b) Mobile and stationary equipment shall be maintained in safe operating condition. ~~and~~ eEquipment in unsafe condition shall be removed from service immediately.

(c) Good housekeeping shall be practiced on all equipment. All heavy duty equipment shall be cleaned as necessary to maintain the equipment reasonably free of combustible substances.

(d) Men shall not work on or from a piece of mobile equipment in a raised position until it has been securely blocked in place.

(e) No work shall be performed under machinery or equipment that has been raised until such machinery or equipment has been securely blocked in place.

(f) While greasing or doing repair work on a boom of a shovel, dragline, or backhoe, the boom shall be lowered to a position whereby the work can be done from the ground or the workmen shall use safety belts. This does not apply on shovels, draglines, or backhoes that are equipped with safe handrails or ladders.

(g) Dippers of buckets or shovels, draglines and backhoes shall be lowered for repairs.

(h) Repairs or maintenance shall not be performed on equipment until the power is off and the equipment is blocked against motion, except where the movement of the machine or parts is necessary to make adjustment.

42 26.4. Warning devices, lights, brakes.

(a) ~~Dump trucks used to haul coal or other material~~ All mobile equipment shall be equipped with an approved automatic warning device which shall give a clearly distinguishable alarm when such equipment is in reverse.

(b) Equipment such as fork lifts, front-end loaders, tractors, dozers, and graders shall be provided with an approved audible warning device.

(c) Lights shall be provided on both ends of equipment when equipment is being worked other than during daylight hours. Also lights on both ends of equipment shall be provided during other existing conditions such as fog, etc.

(d) ~~Power driven~~ All mobile equipment shall be equipped with adequate brakes. ~~All trucks and front-end loaders~~ mobile equipment shall be equipped with adequate parking brakes.

42 26.5. Dump trucks and dumping.

(a) Dump bodies of trucks shall be properly blocked when raised for any purpose except dumping of load.

(b) No person shall be permitted in or on the cargo space of dump trucks while being loaded with coal or other materials.

(c) No person shall be allowed in the cab or a dump truck while the truck is being loaded with power shovel, front-end loader, or backhoe unless the cab is shielded.

(d) Truck cabs where rear vision is impaired shall be equipped with adequate rear view mirrors on both sides.

(e) The dipper of a loading shovel shall be swung over the body of the truck and not the cab.

42 26.6. Dippers.

(a) Riding on a dipper or bucket shall be prohibited.

(b) Workmen shall keep out from under suspended dippers at all times.

(c) Energized trailing cables on shovels shall not be moved with the shovel dipper unless non conductive cable slings or sleds are used.

(d) Operators shall not swing a dipper or bucket over passing haulage equipment.

42 26.7. Equipment generally.

(a) No equipment or machinery shall be altered or modified in a manner that reduces the level of safety.

(b) Road maintenance equipment such as graders or other equipment normally used shall be equipped with roof mounted approved flashing lights.

(c) All equipment, when equipped with a safety bar for automatic transmission, shall be set in locked position before the operator leaves the cab. Operators of dozers that are equipped with standard transmission, shall lock the park brake, place the transmission in a neutral position, and lock the clutch in before leaving the cab.

(d) All steps, and handrails, walkways and platforms on surface mining equipment shall be maintained in a safe condition.

(e) Electrically powered mobile equipment shall not be left unattended unless the master switch is in the "Off" position. All operating controls shall be placed in neutral position, and the

brakes set or other equivalent precautions taken against rolling.

(f) A tow bar or other approved device shall be used for towing equipment. A safety chain shall be used in conjunction with a tow bar.

(g) All exhaust tail pieces shall be positioned and properly maintained to prevent carbon monoxide and other toxic fumes from entering an operator's compartment.

(h) The operator of a grader shall face in the direction of travel except during grading operations in a local area.

(j) Emergency stop switches shall be provided, and maintained, to quickly de-energize electrically powered mobile equipment engines in the event of an emergency. The switches shall be located in the operator's cab and also at a location accessible from ground level.

(k) Electrical compartments in use on electrically powered mobile equipment shall be maintained free of dust, water, and oil accumulations. Electrical compartment panel doors shall be secured in a manner that prohibits access. Only certified electricians or a trained manufacturer's representative who is supervised by a certified electrician shall access the panels.

(l) Wheel covers (hubcaps) shall be provided for electric wheel motors, shall be maintained in good condition, and shall be adequately secured so as to prevent movement during travel.

42 26.8. Glass, and doors and mirrors.

(a) Cab windows of glass on equipment shall be safety glass or equivalent material with good visibility, in good condition, not broken or cracked to such extent that it can be felt, and kept clean.

(b) When required by the ~~d~~Director, all mobile equipment shall be provided with windshield wipers and such wipers shall be maintained in good operating condition.

(c) All doors on mobile equipment shall be maintained in good operating condition.

(d) Adequate mirrors shall be maintained on all mobile equipment.

42 26.9. Guards.

(a) Fan blades, shafts, gears, flywheels, coupling, and similar exposed moving machine parts which may be contacted by persons shall be adequately guarded.

(b) Guards installed on equipment to prevent accidental contact with moving parts shall:

(1) Be of substantial construction;

(2) Not have openings large enough to admit a person's hand;

(3) Be firmly bolted or otherwise installed in stationary position; and

(4) Be of sufficient dimension to exclude the possibility of bodily contact while in motion.

42 26.10. Operation of mobile equipment.

(a) Mobile equipment operators shall have full control of the equipment while in motion and shall operate such mobile equipment safely.

(b) The type of equipment and posted operating speeds shall be prudent and consistent with conditions of roadways, grades, clearance, visibility and traffic.

(c) All mobile equipment shall be completely stopped before a person gets on or off.

(d) No person other than the operator shall be permitted to ride in or on equipment unless in line of duty, and only then when adequate safe seating facilities are provided.

(e) Cabs of mobile equipment shall be kept free of extraneous materials and adequately ventilated. Enclosed cabs of mobile equipment manufactured after the effective date of this Rule shall be adequately ventilated by heaters, defrosters, and air conditioners.

(f) When necessary to protect the operator of the equipment, all rubber tired or crawler mounted self-propelled scrapers, front-end loaders, dozers, graders, and tractors that are used on surface coal mines shall be provided with substantial falling object protective structures.

(g) Equipment shall be operated only by persons trained in the use of and authorized to operate such equipment.

(h) Operators of all equipment shall keep a reasonable safe distance from the edge of all vertical or abrupt excavations or fills.

42 26.11. Loads.

(a) Equipment which is to be hauled shall be secured.

(b) Any load extending more than four (4) feet beyond the rear of the vehicle body shall be marked clearly with a red flag.

(c) Dump trucks shall be trimmed properly when they have been loaded higher than the confines of their cargo space.

42 26.12. Track type dozers - track type dozers shall meet the following standards:

- (a) Adequate fan blade guards.
- (b) Track brakes shall be working properly.
- (c) Steering clutches shall be in operating condition.
- (d) Portable fire extinguisher of at least five (5) pounds.
- (e) All floor boards shall be kept secured in place.
- (f) Safety bar lever for automatic transmission shall be in working condition.
- (g) Approved warning device which the operator can operate manually.
- (h) Cab protection when the dozer is being operated near the highwall or where there is a hazard from falling material.

42 26.13. Front-end loaders - rubber tire front-end loaders shall meet the following standards.

- (a) Portable fire extinguishers, of at least five (5) pounds.
- (b) Fan blade guards.
- (c) Adequate lights.
- (d) Approved warning devices.
- (e) If loader is provided with a windshield type cab, the windshield shall be of safety type glass, or the equivalent with good visibility and shall be equipped with windshield wipers.
- (f) Steering apparatus shall be functioning properly.
- (g) Adequate foot brakes - each individual wheel brake shall be working properly.
- (h) The parking brake shall have capability equivalent to hold the vehicles stationary on the a twelve percent (12%) ~~dry swept concrete~~ grade under all conditions.
- (i) The service braking system using stored energy shall be equipped with a warning device that activates when the system energy drops below fifty percent (50%) of the manufacturer's specified minimum operating energy level.

42 26.14. Machinery.

- (a) All overhead belts shall be adequately guarded if the whipping action from a broken belt could be hazardous to a person below, or if within seven (7) feet of a person's work area or where

persons may pass.

(b) Belt conveyors in locations where fire would create a hazard to personnel shall be provided with switches to stop the drive pulley automatically in the event of excessive slippage.

(c) Unguarded conveyor belt walkways, less than five (5) feet in width, shall be equipped with emergency stop switches or pull cord along their entire length.

42 26.15. Hand-held tools, power tools and safety devices.

(a) Conditions of tools - all tools, power tools and similar equipment shall be maintained in a safe condition.

(b) Hand-held power tools shall be equipped with controls requiring constant hand or finger pressure to operate the tools or shall be equipped with friction or other equivalent safety device.

(c) Employers shall not issue or permit the use of unsafe hand tools.

(d) Adjustable, pipe, end and socket wrenches shall not be used when jaws are sprung to the point that slippage occurs.

(e) Impact tools such as drift pins, wedges, and chisels, shall be kept free of mushroomed heads.

(f) The wooden handles of tools shall be kept tight and free of splinters or cracks and shall be kept tight in the tool.

(g) Electric power operated tools shall be approved double-insulated or grounded type.

(h) Only proper hoisting equipment shall be used for hoisting or lowering tools. The use of hoses or electric cords for such purpose is prohibited.

(i) Pneumatic power tools shall be secured to the hose by some positive means to prevent the tools from becoming accidentally disconnected.

(j) Safety clips or retainers shall be securely installed and maintained on pneumatic impact (percussion) tools.

(k) The manufacturer's safe operating pressure for hoses, pipes, valves, filters, and other fittings shall not be exceeded.

(l) All fuel powered tool engines shall cease operations while being refueled, serviced, or maintained.

(m) When fuel powered tools are used in enclosed spaces, the applicable requirements for

concentrations of toxic gases and use of personal protective equipment shall apply.

(n) Only approved fuel containers shall be used, and such containers shall be safely stored.

(o) All hand-held tools, power tools and safety devices shall be used and maintained in accordance with manufacturer's safety specifications. This does not preclude the requirements for control locking devices as stated in 56 CSR 3-26.15(b).

42 26.16. Jacks.

(a) The manufacturer's rated capacity shall be legibly marked on all lifting jacks and shall not be exceeded. All jacks shall be maintained and used in accordance with the manufacturer's safety specifications and safety instructions.

(b) All lifting jacks shall have a positive stop to prevent over-travel.

(c) Blocking - When it is necessary to provide a firm foundation, the base of the lifting jack shall be blocked or cribbed. Where there is a possibility of slippage of the metal cup or the jack, a wood block shall be placed between the cap and the load. Work shall not be performed under any machinery until the proper blocking is in place and, with the exception of a jack, tight.

42 26.17. Stationary grinding machines, protective devices.

(a) Mechanically operated grinding wheels shall be equipped with safety washers, substantial retaining hoods and approved eye shields. Safety glasses, goggles, or approved face shields shall be provided and located at the grinding location and shall be worn by persons when using the machine.

(b) Adjustable tool rests shall be set as close as required to manufacturer's specifications.

(c) Grinding wheels shall be operated according to the specification of the manufacturer.

42 26.18. Stationary grinding machines.

(a) Grinding wheels shall be equipped with (1) safety washers of adequate size; (2) substantial retaining hoods with maximum angular exposure of the grinding wheel periphery and sides of not more than ninety (90) degrees except that when work requires contact with the wheel below the horizontal plane of the spindle, an angular exposure shall begin not more than forty-five (45) degrees above the horizontal plane of spindle, which safety guards shall be strong enough to withstand the effect of a bursting wheel, (3) face shields or goggles, in good condition, to be worn by all operators, (4) work rests on floor and bench mounted grinders which are rigidly supported, readily available, and which shall be kept at a distance not to exceed one-eighth (1/8) from the surface of the wheel; (5) all other applicable requirements of the American National Standards Institute Safety Code for the use, care, and protection of abrasive wheels; and (6) dust collectors or exhaust ventilation systems vented to the outside of the building. Safety hoods, (guards or flanges) shall be mounted so as to maintain proper alignment with the wheel, and shall be of sufficient strength to

retain fragments of the wheel in the case of accidental breakage. All abrasive wheels shall be ring-tested before mounting to insure they are free from cracks or defects, and shall fit freely on the spindle and not be forced on.

~~(b) All grinding wheels shall be operated in accordance with the manufacturer's specifications.~~

42 26.19. Protective structures fall object and roll over protective structures - All rubber tired or crawler mounted self-propelled scrapers, front-end loaders, dozers, graders, and tractors, manufactured after January 1, 1969 shall be provided with roll over protective structures.

42 26.20. Tires and repairs.

(a) A safety tire rack, cage, or equivalent protection shall be provided when inflating tires installed on split or rims equipped with locking rings or similar devices. Tires shall be deflated before repairs on them are started and means shall be provided to prevent wheel locking rims from creating a hazard during tire inflation.

(b) Heat shall not be applied to lug bolts, rims or wheels while tires are inflated.

(c) When work is being performed on models that are equipped with dual wheels both tires must be deflated for heating lugs before repair work begins. Safe means shall be provided for removing rocks or other hazardous material caught between the dual tires.

(d) No person shall be permitted in front of a tire being inflated either on or off equipment ~~and persons engaged in inflating or deflating tires shall perform such work in an area isolated from other persons.~~

(e) When fork lift trucks are used in mounting or transporting of tires, adequate means shall be taken to assure that tires are secured properly. No person shall be permitted to stand between the hub of a vehicle and fork lift truck when used to change a tire.

(f) A clip-on-air chuck shall be provided at all tire airing stations. At least six (6) feet of air hose shall be provided between the valve stem and inflation gauge.

(g) All tires shall be maintained in a safe condition according to manufacturer's specifications. Any tire with a defect which could be a hazard to the safe operations of a vehicle or to other persons shall be replaced immediately.

26.21 Operating equipment on extreme slopes.

(a) Extreme Slope. An extreme slope is any slope greater than a 2:1 slope.

(b) Prior to any equipment operating on an extreme slope, a meeting shall be conducted with a mine foreman and all persons involved in working on the extreme slope to develop a written plan

as to how the equipment operators shall work on the extreme slope safely. The written plan shall specify the extreme slope work area and shall address the following variables:

1. Length of slope;
2. The type of landing at the bottom of the extreme slope;
3. Geological characteristics of the material on the extreme slope, weather conditions, and visibility;
4. Whether the equipment operating on the extreme slope is designed for such conditions;
5. Competence of the equipment operator.

(c) A record of that meeting and written plan shall be kept for one (1) year and made available to a representative of the Director upon request.

(d) In the event changes occur in the variable(s) listed in paragraph (b), of this subsection, another meeting with a mine foreman and all persons involved in working on the extreme slope shall occur addressing the changing variable(s) and how work shall continue safely.

(e) No equipment shall be used on an extreme slope unless that equipment possesses an approved ROPS and the equipment operator uses a seatbelt.

(f) While working on an extreme slope, a sufficient landing area shall be maintained at the bottom of the slope work area consistent with the size of the equipment.

(g) No person shall work below the extreme slope equipment operator or in other areas where they could be affected by people working on extreme slopes

(h) When variables dictate some safeguard must be utilized. The following safeguards are considered acceptable: cable winching; drilling and shooting the slope to lessen the degree of the slope; benching to lessen the degree of the slope; and adding additional materials to lessen the degree of the slope. Other forms of safeguard can be utilized if they provide a equal or greater level of safety.

(i) When cable winching is utilized as the safeguard for operating equipment on extreme slopes, the operator shall follow the manufacturer's specifications and limitations of the mobile equipment, wire ropes, and all attachments.

(j) When cable winching the following requirements must be met:

(1) The equipment being used to assist a dozer, or other equipment working on slopes shall be of proper size and strength to provide adequate anchorage. The equipment providing anchorage shall be positioned to provide maximum stability.

(2) The winch line assembly shall be of proper size and strength, and properly maintained to provide safety for all equipment.

(3) Winch cables used by equipment working on slopes shall be of proper size according to manufacturer's specifications.

(4) Winch cables shall be secured to the winch assembly drum according to the manufacturer's specifications.

(5) A minimum of three (3) wraps of winch cable shall remain on the drum at all times.

(6) The live-end connection device used to secure the two pieces of equipment together shall be of a design that minimizes the possibility of accidental disconnection. The connection device shall be of the proper strength for the duties performed and maintained in safe condition according to manufacturer's specifications.

(7) All winch cables shall be securely fastened to the live-end connection device by the proper number of wire-rope clamps, or properly wedged according to the manufacturer's specifications.

(8) All components of the winch line assembly shall be inspected by the equipment operator periodically during daily operations.

(k) Communications, either audible or visual, shall be maintained between equipment operators while working on extreme slopes. No one shall work on an extreme slope alone.

§56-3-43-27. Ramps, Tipples, Cleaning Plants Coal Handling Facilities, and other Surface Areas.

43 27.1. Surface installations generally.

(a) Surface installations, generally all mine structures, enclosures, and other facilities (including custom coal preparation) shall be maintained in good condition.

(b) In unusually dusty locations, electric motors, switches and controls shall be of dust-tight construction, or enclosed with reasonable dust-tight housings or enclosures.

(c) Opening in surface installations through which men or material may fall shall be protected by railings, barriers, covers or other protective devices.

(d) Illumination sufficient to provide safe working conditions shall be provided in and on all surface structures, paths, walkways, switch panels, loading and dumping sites, working areas and parking areas.

(e) Materials shall be stored and/or stacked in a manner to prevent stumbling or falling.

(f) Compressed and liquid gas cylinders shall be secured in a safe manner.

43 27.2. Machinery guards.

(a) Gears, sprockets; chains, drive, head, tail and take-up pulleys; flywheels; couplings; shafts; saw blades; fan inlets; and similar exposed moving machine parts which may be contacted by persons, shall be guarded adequately.

(b) Except when testing is necessary, machinery guards shall be secured in place while being operated.

(c) Belt rollers shall not be cleaned while belts are in motion.

43 27.3. Ramps and dumping.

(a) Both sides of any tippable or cleaning plant dumping ramp shall be provided with securely anchored rubbing boards of ample dimensions.

(b) An adequate dumping block at least eight (8) inches high shall be installed at all dumping points, excluding stockpiles.

(c) Adequate protection shall be provided at dumping locations where persons may be endangered by falling material.

(d) Dust control measures shall be taken where dust significantly reduces visibility of equipment operators.

(e) After the effective date of these regulations, all power lines in dumping areas shall, be maintained at least a minimum of six (6) feet above the largest piece of equipment used at such facility, including a dump truck in a raised position.

(f) All dumping ramps shall be of sufficient width to insure safe operation of vehicles used thereon.

(g) At no time shall any person be permitted to enter onto any coal bin, coal crusher, or any other coal dumping facility for means of breaking or removing coal or other materials that is of such a size that it will not drop through the grizzly, or screening device of said dumping facility, unless the equipment has been tagged out, de-energized, and locked out with a key or other approved adequate safeguards approved by the ~~d~~Director.

(h) Ramps and dumps shall be of solid construction and have ample width, clearance and head room and be kept reasonably free of accumulations of material and spillage.

(i) Truck spotters shall be used when required by an authorized representative of the ~~d~~Director.

(j) When car couplers are to be aligned in such rotary dump areas, a hook or other device shall be used. A suitable lifting jack and handle shall be provided at any rotary dump.

43 27.4. Fire protection.

(a) Where cutting or welding is performed at any location, means of prompt extinguishment of any fire accidentally started shall be provided.

(b) Adequate fire-fighting facilities, required by the ~~Department of Energy~~ Office of Miners' Health, Safety and Training, shall be provided on all floors. At least two (2) exits shall be provided for every floor of tipples and cleaning plants constructed after the effective date of these regulations.

(c) Signs warning against smoking and open flames shall be posted so they can be readily seen in areas or places where fire or explosion hazards exist.

(d) Smoking or open flame in or about surface structures shall be restricted to locations where it will not cause fire or an explosion.

(e) In structures where compressed gases are piped through permanently installed fixtures, such fixtures shall be examined daily for leaks and damage. If leaks or damage to the fixtures are discovered, repairs shall be made immediately.

43 27.5. Repairs of machinery.

(a) Machinery shall not be lubricated or repaired while in motion, except where safe remote lubricating devices are used. Machinery shall not be started until the persons lubricating or repairing it has given a clear signal.

(b) Means and methods shall be provided to assure that structures and the immediate area surrounding the same shall be reasonably free of coal dust accumulations.

(c) Where repairs are made to tipples, or cleaning plants, proper scaffolding and proper overhead protection shall be provided for workmen when necessary.

(d) Where overhead repair work is being performed at surface installations, adequate protection shall be provided for all persons working or passing below.

43 27.6. Stairs, platforms, etc.

(a) Stairways, elevated platforms and runways shall be equipped with handrails. Railroad car trimmer platforms are exempted from such requirements.

(b) Where required, elevated platforms and stairways shall be provided with toeboards. They shall be kept clear of refuse and ice and maintained in good condition.

43 ~~27~~.7. Belts, etc.

(a) Drive belts shall not be shifted while in motion unless such machines are provided with mechanical shifters.

(b) Belt dressing shall not be applied while in motion.

(c) Belt, chains and ropes shall not be guided onto power-driven moving pulleys, sprockets, or drums with the hand except equipment especially designed for hand feeding.

43 ~~27~~.8. Conveyors and crossovers.

(a) When the entire length of a conveyor is visible from the starting switch, the operator shall visually check to make certain that all persons are in the clear before starting the conveyor. When the entire length of the conveyor is not visible from the starting switch, a positive audible or visible warning system shall be installed and operated to warn persons when the conveyor will be started.

(b) Crossovers shall be provided where necessary to cross conveyors. All crossovers shall be of substantial construction with rails and maintained in good condition. Moving conveyors shall be crossed only at designated crossover points.

(c) A positive audible or visible warning system shall be installed and operated to warn persons that a conveyor or other tipple equipment is to be started.

(d) Pulleys of conveyors shall not be cleaned manually while the conveyor is in operation.

(e) Guards, nets, or other suitable protection shall be provided where tramways or conveyor belts pass over roadways, walkways or buildings.

(f) Where it is required to cross under a belt, adequate means shall be taken to prohibit a person from making contact with a moving part.

43 ~~27~~.9. Tipple or cleaning operations.

(a) At least two (2) persons shall be continuously employed in the operation of a tipple or cleaning plant.

(b) Good housekeeping shall be practiced in and around tipples and cleaning plants. Such

practices include cleanliness, orderly storage of materials, and the removal of possible sources of injury, such as stumbling hazards, protruding nails and broken glass.

(c) Adequate ventilation shall be provided in tipples and preparation plants.

(d) Coal dust in or around tipples or cleaning plants shall not be permitted to exist or accumulate in dangerous amounts.

43 27.10. Travelways.

(a) Safe means of access shall be provided and maintained to all working places.

(b) Travelways, platforms and other access to areas where persons are required to travel or work, shall be kept free of all extraneous material and other stumbling or slipping hazards.

(c) Inclined travelways shall be constructed of nonskid material or equipped with cleats.

(d) Regularly used travelways shall be salted, sanded or cleared of snow and ice as soon as practicable.

43 27.11. Ladders.

(a) All ladders shall be securely fastened. Permanent ladders more than ten (10) feet in height shall be provided with backguards.

(b) Ladders shall be of substantial construction and maintained in good condition.

(c) Wooden ladders shall not be painted.

(d) Fixed ladders shall not incline backward at any point unless equipped with backguards.

(e) Fixed ladders shall be anchored securely and installed with at least three (3) inches of toe clearance.

(f) Side rails of fixed ladders shall project at least three (3) feet above landings, or substantial handholds shall be provided above the landing.

(g) No person shall be permitted to work off of the top step of any ladders.

(h) Metal ladders shall not be used with electrical work, where there is danger of the ladder coming into contact with power lines or an electrical conductor.

(i) The maximum length of a step ladder shall be twenty (20) feet and an extension ladder sixty (60) feet.

43 27.12. Hoisting.

(a) Hitches and slings used to hoist materials shall be suitable for handling the type of material being hoisted.

(b) Persons shall stay clear of hoisted loads.

(c) Tag lines shall be attached to hoisted materials that require steadying or guidance.

(d) A hoist shall not lift loads greater than the rated capacity of the hoist being used.

43 27.13. Drawoff tunnels.

(a) When it is necessary for a tunnel to be closed at one (1) end, an escapeway not less than thirty (30) inches in diameter (or of the equivalent, if the escapeway does not have a circular cross section) shall be installed which extends from the closed end of the tunnel to a safe location on the surface; and if the escapeway is inclined for more than thirty (30) degrees from the horizontal, it shall be equipped with a ladder which runs the full length of the inclined portion of the escapeway. All escapeways shall be adequately illuminated.

(b) Tunnels located below stockpiles, and coal storage silos, shall be adequately ventilated to maintain concentrations of methane below one percent (1%) per centum.

(c) Communications shall be provided near the entrance to the escapeways in drawoff tunnels.

(d) Self Contained Self Rescuers for all persons working in the drawoff tunnel shall be provided and stored near the entrance to the escapeway. All persons required to work in the drawoff tunnel shall be trained in the proper use of self-contained self rescuers (W. Va. Code § 22A-2-55(f)(1)) prior to working therein. Self-contained self rescuers shall be maintained in safe operable condition.

43 27.14. Ventilation and methane.

(a) Tests for methane in structures, enclosures, or other facilities where coal is stored shall be conducted by a qualified person with an approved methane detector at least once during each operating shift.

(b) Methane content in surface structures - If, at any time, the air in any enclosure contains 1.0 percent or more of methane, changes or adjustments in the ventilation of such installation shall be made at once so that the air shall contain less than one (1.0) percent methane.

(c) Dust accumulation in surface installations - Coal dust on surface structures, enclosures, or other facilities shall not be permitted to exist or accumulate in dangerous quantities.

43 27.15. Railroad equipment.

(a) Railroad cars shall be maintained under control at all times. Cars shall be dropped at a safe rate of speed and in such a manner that will insure that the car dropper maintains a safe position while working and traveling around the cars. The car dropper shall control the trip from one (1) location and not drop more cars than can be controlled from such location. A car dropper shall not drop more than three (3) cars at one (1) time with one (1) brake.

(b) Railroad cars shall not be coupled or uncoupled manually from the inside of curves unless the railroad and cars are so designed to eliminate any hazard from coupling or uncoupling cars from inside curves.

(c) No person shall ride the drawhead or coupler of a railroad car. No person other than the car dropper shall ride cars. No car dropper shall ride the end of a car about to be coupled with another car if other brakes are available.

(d) Employees handling railroad cars shall have access to and use an approved distinct audible signaling device to give warning when cars are in motion. A car dropper shall only in case of an emergency, get on or off a moving car.

(e) Rail cars shall not be left on side tracks unless ample clearance is provided for traffic on adjacent tracks. Parked rail cars, unless held effectively by brakes, shall be blocked securely.

(f) Railroad cars shall be trimmed properly when they have been loaded higher than the confines of their cargo space.

(g) A minimum of thirty (30) inches continuous clearance from the farthest projection of moving railroad equipment shall be provided on at least one (1) side of the tracks; all places where it is not possible to provide thirty (30) inch clearance shall be marked conspicuously.

(h) Roadbeds, rails, joints, switches, frogs, and other elements on railroads shall be designed, installed and maintained in a safe manner consistent with the speed and type of haulage.

(i) Positive - acting stopblocks, derail devices, track skates, or other adequate means shall be installed where ever necessary to protect persons from runaway railroad equipment.

(j) Switch throws shall be installed so as to provide adequate clearance for switchmen.

(k) Where necessary, bumper blocks or the equivalent shall be provided at all track dead ends.

(l) Cars shall be inspected for broken steps, platforms and brake wheels and for defective brakes before dropping.

(m) Equipment operating speeds shall be consistent with conditions of roadways, grades,

clearance, visibility, traffic and the type of equipment used.

(n) Safety belts shall be worn and properly attached by all car droppers handling railroad cars. All such belts shall be of a design to allow maximum safety to provide for immediate uncoupling.

43 27.16. Railroad track construction and maintenance.

(a) All parts of the track haulage road under the ownership or control of the operator shall be strictly constructed and maintained. Rails shall be secured at all points by means of plates or welds. When plates are used, plates conforming with the weight of the rail shall be installed and broken plates shall be replaced immediately. Appropriate bolts shall be inserted and maintained in all bolt holes. The appropriate number of bolts conforming with the appropriate rail plate for the weight of the rail shall be inserted, tightly secured, and maintained.

(b) All points shall be installed and maintained so as to prevent bad connections. Varying weights of rail shall not be joined without proper adapters. Tracks shall be blocked and leveled and so maintained so as to prevent high and low joints.

(c) Tracks shall be gauged so as to conform with the track mounted equipment. Curves shall not be constructed so sharp as to put significant pressure on the trucks of the track mounted equipment.

(d) Severely worn or damaged rails and ties shall be replaced immediately.

(e) When mining operations are performed within any twenty-four (24) hour period, operations shall be inspected at least every twenty-four (24) hours to assure safe operation and compliance with the law and regulations. The results of which inspection shall be recorded.

(f) Personnel who are required frequently and regularly to travel on belts or chain conveyors extended to heights of more than ten (10) feet shall be provided with adequate space and protection in order that they may work safely. Permanent ladders extending more than ten (10) feet shall be provided with back guards. Walkways around thickness that are less than four (4) feet above the walkway shall be adequately guarded. Employees required to work over thickener shall wear a safety harness adequately secured, unless walkways or other suitable safety devices are provided.

§56-3-44 28. Coal Storage Bins; Recovery Tunnels; Coal Storage Piles.

44 28.1.

(a) Coal storage bins hereafter constructed with vertical sides fifty (50) feet or over in height shall be provided with ventilators or louvers or both to provide adequate ventilation. Where roofs are constructed over coal storage bins, adequate ventilation shall be provided by stacks, ventilators, louvers or mechanical means.

(b) Where cutting or welding is performed at any location where coal is stored, means of

prompt extinguishment of any fire accidentally started shall be provided, and the area where cutting or welding is performed shall be adequately watered down and rock-dusted.

(c) An escapeway shall be provided from any recovery tunnel hereafter constructed to a safe place on the surface; such escapeway shall be at least thirty (30) inches in diameter and where inclined, a ladder shall be provided to extend full length of the escapeway to facilitate emergency exit.

(d) Extreme caution shall be exercised by all employees required to work at or near coal storage piles during coal recovery operations to avoid injury by coal slides or by being in or drawn into a chute.

§56-3-45-29. Fire Protection.

45 29.1. Fire extinguishers.

(a) A portable fire extinguisher containing a nominal weight of at least five (5) pounds shall be kept on each piece of mobile equipment. This requirement is also applicable to mobile equipment equipped with fire suppression systems.

(b) All portable fire extinguishers on equipment shall be properly secured.

45 29.2. Flammable liquids.

(a) Flammable liquids, such as oils, greases, gasoline and such other like materials shall be stored in buildings, compartments or closed containers used for this purpose only.

(b) The storage of surplus gasoline, oil, or other fuels, other than that which is in the fuel tank, shall be prohibited on any piece of equipment except for diesel equipment using gasoline starting engines, in this instance one (1) extra gallon of gasoline in an approved safety can (flash arresting screen with self-closing lid) may be stored on the equipment securely fastened in a location on the equipment out of the way of moving objects.

(c) Flammable liquids shall not be used to clean machinery.

(d) Combustible materials, grease, lubricants, paints, flammable liquids, shall not be permitted to accumulate where fire hazards exist.

45 29.3. Fueling and storage.

(a) Internal combustion engines, except diesels, shall be shut off and stopped before being fueled.

(b) Areas surrounding flammable liquid storage tanks, electric substations and transformers shall be kept free from grass, (dry) weeds, underbrush, and other combustible materials, for at least twenty-five (25) feet in all directions.

(c) Fuel lines on fuel storage tanks shall be equipped with valves to cut off fuel at the source and shall be located and maintained to minimize fire hazard.

(d) Smoking and use of open lights are prohibited in all places in which flammable materials are stored and in other places where there is a fire hazard.

~~45~~ 29.4. Maintenance of fire fighting equipment.

(a) Fire fighting equipment shall be continuously maintained in a usable and operative condition. Fire extinguishers shall be examined at least once every six (6) months. The date of such examination shall be recorded on a permanent tag attached to the extinguisher.

~~45~~ 29.5. Warnings - Warning signs prohibiting smoking and open flames shall be posted where they can be readily observed in areas or locations where fire or explosion hazards exist.

~~45~~ 29.6. Drills - Fire drills and demonstrations with various types of available fire-fighting equipment shall be held for employees at least once annually. A record of such demonstration shall be recorded.

~~§56-3-46~~ 30. Duties of Persons Subject to Article; Rules and Regulations of Operators.

~~46~~ 30.1.

(a) It shall be the duty of the operators, mine foremen, supervisors, mine examiners, and other officials to comply with and to see that others comply with the provision of these rules and regulations.

(b) It shall be the duty of all employees to comply with these rules and regulations and to cooperate with management and the ~~Department of Energy~~ Office of Miners' Health, Safety and Training in carrying out the provisions hereof.

(c) Reasonable rules and regulations of an operator for the protection of employees and preservation of property that are in harmony with the provisions of these rules and regulations shall be complied with. They shall be printed on cardboard or in book form in the English language and posted at some conspicuous place about the mine or mines, and given to each employee upon request.

~~§56-3-47~~ 31. Protective Equipment and Clothing.

~~47~~ 31.1. Eye protection.

(a) Welders and helpers shall use adequate shields or goggles to protect their eyes.

(b) All employees shall have approved goggles or shields and use the same where there is a

hazard from flying particles, or other eye hazards.

47 31.2. Clothing.

(a) Employees engaged in haulage operations and all other persons employed around moving equipment shall wear snug-fitting clothing.

(b) Protective gloves shall be worn when material which may injure hands is handled. Gloves with gauntleted cuffs shall not be worn around moving equipment.

47 31.3. Safety hats and safety toed shoes.

a) Safety hats and safety toed shoes shall be worn by all persons while in or around a surface mine, tipples or cleaning plants coal handling facilities, and other surface areas. ~~Safety toed shoes shall be worn by all persons while in or around a surface mine, tippie or cleaning plant.~~

(b) ~~All surface mine employees shall be required to wear safety helmets when working in areas where there is a possible danger of head injury from impact, or from falling or flying objects, or from electrical shock and burns: Provided, That such employees shall not be required to wear such safety helmet hats while operating machinery equipped with a falling object protective structure which satisfies the impact and penetration requirements established by the American National Standards Institute, Safety Requirements for Industrial Head protection, Standard Z89.1, unless the Director of the Department of Energy Office of Miners' Health, Safety and Training finds that the dangers set forth herein may be present: Provided, however, That such employees shall be required to wear safety helmets hats while not operating such equipment including periods of travel to and from such equipment. The safety helmets hats required hereunder shall meet the specifications for such helmets hats as prescribed by the mine health and safety administration. Provided, however, Requirement for hard hats and boots shall not apply to persons working in mine offices.~~

47 31.4. Life jackets and belts.

(a) Persons shall wear safety ~~belts~~ harnesses and lifelines where there is a danger of falling. A person shall continuously tend the lifeline when bins, tanks, auger holes, or other dangerous areas are entered.

(b) Life jackets or ~~belts~~ safety harnesses shall be worn where there is a danger from falling into water.

§56-3-48 32. First Aid Equipment.

48 32.1. First aid stations and equipment - Each operator of a surface coal mine, tippie, and preparation plant shall maintain a supply of first aid equipment. First aid equipment shall be located within one thousand (1,000) feet of the working pit, unless a ten (10) unit first aid kit is provided in the pit. When ten (10) unit kits are provided in the pit, such first aid equipment may be maintained within two thousand (2,000) feet of the pit area.

First aid equipment shall contain the following:

- (1) One stretcher.
- (2) One broken-back board, or approved combination stretcher.
- (3) Twenty-four triangular bandages.
- (4) Eight four-inch bandage compresses.
- (5) Sixteen two-inch bandage compresses.
- (6) Twelve one-inch adhesive compresses.
- (7) One foille.
- (8) Two approved blankets.
- (9) One rubber blanket.
- (10) Two tourniquets.
- (11) One one-ounce bottle of aromatic spirits of ammonia.
- (12) Two inflatable plastic leg splints.
- (13) Two inflatable plastic arm splints.
- (14) Six small splints, metal or wooden.
- (15) Two cold packs.

48-32.2. Proper storage of first aid supplies. All first aid supplies required to be maintained shall be stored in suitable sanitary, dust-tight, moisture proof containers. First aid supplies shall be accessible to the miners.

48 32.3. Emergency arrangements.

(a) Each operator of a mine shall make arrangements with a licensed physician, medical service, medical clinic, or hospital to provide emergency medical assistance while any person is on duty at a mine.

(b) Each operator of a mine shall make arrangements with an approved ambulance service or otherwise provide for an approved emergency transportation while any person is on duty at a mine.

(c) Each operator shall have arrangements made with an ambulance service, or other emergency transportation facilities for injured persons to be transported from the work site to a licensed physician, medical service, medical clinic, or hospital provided pursuant to subsection (b) above, while people are actually employed at the operation.

(d) Each operator of a surface coal mine shall immediately after making arrangements required under this section, or immediately after any change of such agreement, post at the appropriate places at the mine, the names, titles, addresses, and telephone numbers of all persons and/or services currently available under such arrangements to provide medical assistance and transportation of injured persons at the mine.

48 32.4. Emergency communications.

(a) Each operator of a surface mine shall provide two (2)-way communication at all times miners are present between all work sites at the mine and an emergency communication center which may be at the mine office or elsewhere at the mine.

(b) Each operator of a surface coal mine shall establish and maintain a direct two-way (2) communication system from such emergency communication center at the mine to the nearest point of medical assistance for use in an emergency. Except as hereinafter provided, such emergency communication system shall be by telephone. If telephone communication from the emergency communication center to the nearest point of medical assistance is not possible at any one (1) mine, the ~~d~~Director may allow by permit such communication by radio transmission to any emergency assistance facility (e.g. state police, sheriff, local hospital) which has available the means of communication with the person or persons providing the requisite emergency medical assistance or transportation.

~~§56-3-49~~ 33. Thermal Coal Dryers and Plants.

49 33.1. Thermal coal dryer plants shall be hereafter constructed, maintained and operated in compliance with the following provisions.

(a) Good housekeeping shall be practiced in and around thermal dryer plants.

(b) Adequate fire-fighting facilities shall be provided on all floors.

(c) When welding and cutting operations are to be performed in a dryer structure, the area shall be wetted down thoroughly and adequate fire-fighting apparatus shall be readily available during the operation.

(d) Only qualified persons shall be permitted to operate dryers; however, this provision shall not prohibit qualified persons from training other persons to become qualified operators.

(e) Dryer control panels shall be provided with audible and visible alarm devices; such

devices should be adjusted to function at somewhat less than maximum dryer temperature.

(f) A bypass or relief stack equipped with an automatically operated damper shall be provided for by passing gases from the heating units to the outside atmosphere during emergency or normal shutdown operations.

(g) Thermal coal dryers hereafter installed shall not be enclosed except that roof may be used. Whenever it is deemed necessary to enclose thermal dryers, such equipment shall be in a fire proof structure.

(h) Dryer installations and discharge stacks shall be protected with adequate explosion release vents that open to the outside atmosphere.

(i) Thermal coal dryers shall be located at a safe distance from tipples, cleaning plants, mine openings and surface buildings, such as oil storage areas, explosive magazines, and other buildings where coal dust, sparks and flames are likely to enter and become ignited or otherwise cause danger of fires.

(j) Dryers shall be equipped with quick-response heat control devices which in the event of super elevated temperatures, will automatically divert the hot inlet gases into a bypass stack, thereby bypassing the drying chamber and at the same time stopping the fuel from being supplied to the air heater.

(k) All dryers, conveyors and other fine coal transporting machines shall be constructed as dust-tight as practicable. Where necessary, such equipment shall be provided with removable covers for inspection and cleaning and shall be provided with vent pipes to the outside atmosphere to permit the escape of distilled gases.

(l) Dryers shall be examined thoroughly after normal and emergency shutdown for fires and coal dust accumulations.

(m) Dryer controls, valves, and mechanical equipment shall be frequently inspected, and no dryer shall be operated with defective mechanical equipment.

(n) The gauges of temperature control instruments shall be of the recording type.

(o) Operating rules suitable for the characteristics of each dryer system and the materials processed shall be developed and shall be available at the control panel.

(p) Electrical equipment, electrical wiring and lighting fixtures shall be of dust-tight construction.

(q) Adequate illumination shall be provided.

(r) Dryers shall not be operated beyond their rated evaporation capacity.

(s) Fluid bed dryers shall be provided with water sprays of sufficient capacity for use in event of fire.

(t) After shutdown, thermal dryers shall be cleared of hot coals so as to minimize ignitions on succeeding start-ups.

(u) Thermal coal dryers previously installed in a tippie of cleaning plant shall be separated where practicable from other working areas by substantial partitions capable of providing greater resistance to explosion pressures than an exterior wall or walls.

(v) When it is necessary to use extension cables for emergency illumination, such lighting devices shall be dust-tight and adequately guarded. When it becomes necessary to perform work in dryer bins or any other dusty area, permissible cap lamps shall be used for illumination.

§56-3-50 34. Explosion or Accident; Notice: Investigation by Department of Energy Office of Miners' Health, Safety and Training.

50 34.1. Whenever, by reason or any explosion or other accident in or about any coal mine or the machinery connected therewith, loss of life, or serious personal injury shall occur, it shall be the duty of the superintendent of the mine, and in his absence, the mine foreman in charge of the mine, to give immediate notice to the Director of the Department of Energy Office of Miners' Health, Safety and Training and the inspector of the district, stating the particulars of such accident. If anyone is killed, the inspector shall immediately go the scene of such accident and make such recommendations and render such assistance as he may deem necessary for the future safety of the men, and investigate the cause of such explosion or accident and make a record thereof which he shall preserve with the other records of his office, the cost of such records to be paid by the Department of Energy Office of Miners' Health, Safety and Training, and a copy shall be furnished to the operator and other interested parties. To enable him to make such investigation, he shall have the power to compel the attendance of witnesses and to administer oaths or affirmations. The Director of the Department of Energy Office of Miners' Health, Safety and Training shall have the right to appear and testify and to offer any testimony that may be relevant to the question and to cross-examine witnesses.

§56-3-51 35. Preservation of Evidence Following Accident or Disaster.

51 35.1. Following a mine accident resulting in the death of one (1) or more persons and following any mine disaster, the evidence surrounding such occurrence shall not be disturbed after recovery of bodies or injured persons until an investigation by the Department of Energy Office of Miners' Health, Safety and Training has been completed.

§56-3-52 36 Monthly Report by Operator.

52 36.1. The operator of every surface mine shall, on or before the end of each calendar month, file with the Director of the Department of Energy Office of Miners' Health, Safety and Training a report covering the preceding calendar month on forms furnished by the ~~d~~Director. Such reports

shall state the number of accidents which have occurred, the number of persons employed, the days worked and the actual tonnage mined, on each permit issued by the Department of ~~Natural Resources~~ Environmental Protection.

§56-3-53 37. Emergency Medical Personnel.

~~53 37.1.~~ Emergency personnel in coal mines.—~~e~~Emergency medical personnel shall be employed in every mine in the state. On or before the first day of July, one thousand nine hundred seventy-eight (1978), at least one (1) emergency medical attendant as defined in section 2(16-4C-2), article 4C, chapter 16 of this Code, paramedic as defined in section 2 (30-3b-2), article 3B, chapter 30 of this code, or physician assistant as defined in section 1 (30-3a-1), article 3A, chapter 30 of this code, shall be employed at a mine for every seventy (70) employees or any part thereof who are engaged at one (1) time, in the extraction, production or preparation of coal: **Provided**, That the provision of this section shall not apply to mines employing no more than ten (10) employees.

Said emergency medical attendants shall be employed at their regular duties at a central location convenient for quick response to emergencies, and further shall have available to them at all times such equipment as shall be prescribed by the ~~d~~Director, in consultation with the ~~d~~Director of the Department of Health and Human Resources.

§56-3-54 38. First Aid Training of Coal Mine Employees.

54 38.1. Each coal mine operator shall provide every new employee within six (6) months of the date of his employment with the opportunity for first aid training as prescribed by the ~~d~~Director unless such employee has previously received such training. Each coal mine employee shall be required to take refresher first aid training of not less than five (5) hours within each twenty-four (24) months of employment. The employee shall be paid regular wages, or overtime pay if applicable, for all periods of first aid training.

§56-3-55 39. Certificate of Competency and Qualification or Permit of Apprenticeship Required of on all Surface and Underground Mines.

~~55 39.1.~~ Except as hereinafter provided, no person shall work or be employed as a surface miner ~~for the purpose of performing normal duties as at a surface or underground miner in any mine in this State unless he holds at the time he performs such duties a certificate of competency and qualification or a permit of apprenticeship issued under the provisions of Chapter 22A, Article 2 of the West Virginia Code.~~

§56-3-56 40. Permit of Apprenticeship - Surface Miner.

56 40.1. A permit of apprenticeship - surface miner, shall be issued by the ~~d~~Director to any person who has demonstrated by examination a knowledge of the subjects and skills pertaining to employment in the surface mining industry, including, but not limited to general safety, first aid, miner and operator rights and responsibilities, general principles of electricity, health and sanitation, heavy equipment safety, high walls and spoil banks, haulage, welding safety, tippie safety, state and

federal mining laws and regulations and such other subjects as may be required by the board of miner training, education and certification: **Provided**, That each applicant for said permit shall complete a program of education and training of at least forty (40) hours, which program shall be determined by the board of miner training, education and certification and provided for and implemented by the ~~d~~Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training: **Provided, however**, That if a sufficient number of qualified applicants having successfully completed the state training provided by the state ~~Department of Energy~~ Office of Miners' Health, Safety and Training are not available, the operator may request approval from the ~~d~~Director to conduct his own preemployment training program so long as such training adequately covers the minimum criteria determined by the board and such trainees shall be eligible for the same certification as provided by the state.

§56-3-57-41. Supervision of Apprentices.

57 41.1. Each holder of a permit of apprenticeship shall be known as an apprentice. Any miner holding a certificate of competency and qualification may have one (1) person working with him, and under his supervision and direction, as an apprentice, for the purpose of learning and being instructed in the duties and calling of mining. Any mine foreman or assistant mine foreman may have three (3) persons working with him under his supervision and direction, as apprentices, for the purpose of learning and being instructed in the duties and calling of mining: **Provided**, That a mine foreman, assistant mine foreman supervising apprentices in an area where no coal is being produced or which is outby the working section may have as many as five (5) apprentices under his supervision and direction, as apprentices for the purpose of learning and being instructed in the duties and calling of mining or where the operator is using a production section under program for training of apprentice miners, approved by the board of miner training, education and certification.

57 41.2. Every apprentice working at a surface mine shall be at all times under the supervision, ~~and control, and in communication with~~ of at least one (1) person who holds a certificate of competency and qualification.

In all cases, it shall be the duty of every miner operator who employs apprentices to ensure that such persons are effectively supervised and to instruct such person in safe mining practices. Each apprentice shall wear a red hat which identifies him as such while employed at or near a mine. No person shall be employed as an apprentice for a period in excess of eight months, except that in the event of illness or injury, time extensions shall be permitted as established by the Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training.

§56-3-58 42. Certificate of Competency and Qualification - ~~Underground or~~ Surface Miner.

58 42.1. A certificate of competency and qualification as an underground miner or as surface miner shall be issued by the ~~d~~Director to any person who has at least six (6) months total experience as an apprentice and demonstrated his competence as a miner by successful completion of an examination given by the ~~d~~Director or his representative in a manner and place to be determined by the board of miner training, education and certification: **Provided**, That all examinations shall be conducted in the English language and shall be of a practical nature, so as to determine the

competency and qualifications of the applicant to engage in the mining of coal with reasonable safety to himself and his fellow employees: **Provided, however,** That notice of the time and place of such examination shall be given to management at the mine, to the local union there if there is a local union, and notice shall also be posted at the place or places in the vicinity of the mine where notices to employees are ordinarily posted. Examinations shall also be held at such times and places, and after such notice, as the board finds necessary to enable all applicants for certificates to have an opportunity to qualify for certification.

§56-3-59 43. Refusal to Issue Certificate; Appeal.

59 43.1. If the ~~d~~Director or his representative finds that an applicant is not qualified and competent, he shall so notify the applicant not more than ten (10) days after the date of examination.

Any applicant aggrieved by an action of the ~~d~~Director in failing or refusing to issue a certificate or qualification and competency may, within ten (10) days of notice of the action complained of, appeal to the ~~d~~Director who shall promptly give the applicant a hearing and either affirm the action or take such action as should have been taken.

§56-3-60 44. Limitations of Article.

60 44.1. All persons possessing certificates of qualification issued by the Office of Miners' Health, Safety and Training of this State, entitling them to act as mine foreman fire bosses; or assistant mine foreman fire bosses; shall be eligible to engage at any time as miners in the mines of this State. Supervisory and technically trained employees of the operator, whose work contributes only indirectly to mine operations, shall not be required to possess a miner's certificate.

Notwithstanding the provisions of Chapter 22A, ~~Article 3~~, every person working as a surface miner in this State on or before the first day of July, one thousand nine hundred and seventy-four (1974) shall, upon application to the ~~d~~Director, be issued a certificate of competency and qualification.

§56-3-61 45. Violations; Penalties.

61 45.1. Any person who knowingly works in or at a mine without a certificate issued under the provisions of this article, any person who knowingly employs an uncertified miner to work in or at a coal mine in this State, or, any operator who fails to insure the supervision of miners holding a certificate of apprenticeship as provided for in section five (22-6-5) of this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500).

§56-3-62 46. Operators Filing of Plans - Oil and Gas Wells.

62 46.1. Before a coal operator conducts surface or strip mining operations ~~as defined in article 6, chapter 20 of this code~~, within two hundred (200) feet of any well, including the removal of coal and other material, the operator shall file with the ~~Department of Energy~~ Office of Miners' Health,

Safety and Training and furnish to the well operator by certified mail, return receipt requested, its mining maps and plans (which it is required to prepare, file and update to and with the regulatory authority) for the area within two hundred (200) feet of the well, together with a notice, or a form furnished by the Department of Energy Office of Miners' Health, Safety and Training, informing them that the mining maps and plans are being filed or mailed pursuant to the requirements of this section, and representing that the planned operations will not unreasonably interfere with access to or operation of the well and will not damage the well. In addition, the coal operator shall furnish the well operator with evidence that it has in force public liability insurance, with at least the minimum insurance coverage required by article 6-3, chapter 20 22 of this code, and the rules and regulations promulgated thereto and thereunder.

Once these mining maps and plans are filed with the Department of Energy Office of Miners' Health, Safety and Training, the coal operator may proceed with its surface or strip mining operations in the manner and as projected on such plans or maps, so long as such surface mining operations do not unreasonably interfere with access to, or operation of, the well or do not damage the well.

§56-3-63 47. Annual Examination of Persons Using Flame Safety Lamps Approved Detectors; Record of Examination; Maintenance of Methane Detectors, Etc.

63 47.1. No person shall be qualified for testing for methane and for oxygen deficiency unless such person has been trained and demonstrates to the satisfaction of an authorized representative of the Director of the Department of Energy Office of Miners' Health, Safety and Training that he is qualified to test for methane with an flame safety lamp or other approved methane detector. Records of such examinations shall be kept by the operator and the Director of the Department of Energy Office of Miners' Health, Safety and Training.

Persons whose duties require them to use an flame safety lamp and other approved detector, that have been qualified by the Department of Energy Office of Miners' Health, Safety and Training to test for methane and oxygen deficiency, shall be examined at least annually to their competence by a certified surface mine foreman, and a record that such examination was given, together with pertinent data relating thereto, shall be kept on file by the operator and a copy shall be furnished to the Department of Energy Office of Miners' Health, Safety and Training.

Persons whose duties require them to administer the annual examinations for methane and oxygen deficiency shall be examined annually by a qualified official from the Department of Energy Office of Miners' Health, Safety and Training. Each operator shall provide for the proper maintenance and care of the permissible flame safety lamp or any other approved device for detecting methane and oxygen deficiency by a person trained in such maintenance, and before each shift, care shall be taken to insure that such lamp or other device is in a permissible condition.

Flame safety lamps Approved detectors shall be given proper maintenance and inspection before each working shift in a manner recommended by the manufacturing company and approved by the Director of the Department of Energy Office of Miners' Health, Safety and Training. Other approved gas detectors shall be given proper maintenance and shall be tested in accordance with the

manufacturer's recommendations before each working shift and calibrated each thirty (30) calendar days.

RESPONSES TO COMMENTS

Nelson Brothers LLC Comments – Nelson Brothers’ comments were submitted as a list of rule numbers to which a comment was made. The Office of Miners’ Health, Safety and Training (OMHST) shall respond to those comments utilizing that same type of format.

§ 56-3-3 Definitions

3.27 - This comment is adopted. The definition shall now read as follows:

Detonator. -- The term “Detonator” shall mean electronic blasting caps, ~~electrical~~ electric blasting caps, and nonelectric delay blasting caps.

3.28 - Based on this comment, OMHST shall modify this definition to include all non-electrical detonating systems including shock tubes as well as gas initiating tubing and miniaturized detonating cords. The definition shall now read as follows:

Nonelectric delay blasting caps. -- The term “Nonelectric Delay Blasting Caps” shall mean a blasting cap with an integral delay element in conjunction with and capable of being detonated by a detonation impulse ~~or signal from a miniaturized detonating cord~~ that does not require the use of electric energy to function.

3.35 - This comment is adopted. The definition shall now read as follows:

Blasting area. -- The term “blasting agent” shall mean the area near blasting operations in which concussion or flying material can reasonably be expected to cause injury. The blaster in charge needs to determine the blasting area.

§ 56-3-15 Explosives and Blasting

15.1(j) - Based on this comment and a comment from Apogee Coal Company, LLC¹ (Apogee), Massey Coal Company (Massey), and the United Mine Workers of America (UMWA), OMHST shall modify this rule to read as follows:

Maintenance and examinations shall be performed on the emulsion pump in accordance with the manufacturer’s safety specifications. A record of the examinations shall be kept with the vehicle for one year and made available to a

¹ OMHST’s specific response to Apogee’s comment is found in the section of this Response that pertains to Apogee.

representative of the Director, and an authorized representative of the miners, upon request.

15.3(d) - OMHST adopts this comment. The Rule shall now read as follows:

Explosives, ~~blasting caps and electric blasting caps and detonators~~ shall not be carried in pockets of clothing or left lying around unguarded.

15.3(h) - OMHST adopts this comment and will modify the Rule to include all vehicles. The Rule shall now read as follows:

Driving vehicles or dragging boxes over firing lines, detonator wires, explosives, blasting agents, and detonators shall be prohibited. ~~The backing of drills over loaded holes shall be prohibited.~~ Mobile equipment and vehicles shall not be trammed or driven over loaded holes.

15.4(c) - OMHST will not adopt this comment. This comment, if it were to be adopted, would exclude those companies using electronic detonators from the requirement of doing a stray current test. However, OMHST is not aware of any independent test results that show electronic detonators are unaffected by extraneous electricity.

15.4(g) - OMHST adopts this comment and will modify the Rule to read:

Tamping shall not be performed directly on a ~~capped~~ primer.

15.5(c) - Based on this comment, OMHST will remove the 1000 feet requirement and return the Rule to its original 500 feet requirement.

When shooting highwall and overburden, the firing/lead lines ~~shooting cable~~ shall be at least five hundred (500) feet in length. ~~When new and never less than four hundred fifty (450) feet..~~

15.5(j) - Based on this comment and a comment from Apogee, OMHST adopts this comment and will modify the Rule to read:

When using electric or electronic detonators, adequate precautions shall be provided to prevent accidental electrical shock to the person(s) detonating the blast. Provisions may include, but not be limited to, insulating and guarding the firing/lead line connections to the firing device or blast controller, providing and using insulating mats on which the blaster may stand and also place under

the firing device or blast controller, the use of an additional properly-timed detonator placed in the firing/lead line to sever the line and prevent the possibility of electrical feedback to the firing device, blast controller, or remote firing device.

15.7(b) - OMHST declines to adopt this comment. Dust, smoke and fumes are dangerous to breath and no one should be in that area until it is clear.

15.8(d) - OMHST declines to adopt this comment because even with electronic detonators, disconnecting is the only safe method.

Apogee Coal Company, LLC comments

3.1 - This comment is unresponsive to the identified section of law. The term “surface miner” does not appear in this definition. Thus, OMHST declines to adopt this comment.

3.9 - This comment is not a true comment, it is a question. Preparation plant workers do not need to possess a surface miner certificate.

3.27 - This is the same comment as that made by Nelson Brothers LLC. OMHST adopted Nelson Brothers’ comment (see Nelson Brothers’ response).

3.28 - This is the same comment as that made by Nelson Brothers LLC. OMHST adopted Nelson Brothers’ comment (see Nelson Brothers’ response).

3.35 - OMHST will adopt this comment. The Rule now reads:

Blasting area. -- The term “blasting area” shall mean the area near blasting operations in which concussion or flying material can reasonably be expected to cause injury. The Blaster in Charge shall determine the blasting area.

3.60 - This comment is a question rather than a comment. However, the fifty (50) feet limitation applies to the entire column of explosives (see 56-3-15.4(c)).

3.68 - This comment is a question rather than a comment. However, OMHST will modify the rule to make this definition more clear. The Rule now reads:

Barrier – The term “Barrier” shall mean any material objects that separate, keep apart or demarcate in a conspicuous manner when used in conjunction with warning signs.

10.1(a) - This comment is a question rather than a comment. However, OMHST’s intent is that active working places include all areas not covered under 36 CSR 23-1, *et seq.*, and 56 CSR 2-1, *et seq.*

10.1(b) - This comment is a correct interpretation of the Rule. No modification to the Rule is necessary.

10.1(c) – This comment is rejected. In the interest of all parties (coal operator, workers, and OMHST) the need to accurately identify those who attended a particular safety meeting outweighs any burden that might be associated with requiring employees to sign-in. OMHST will not make a change to this Rule.

10.2(a) - This comment is twofold: for the interpretation part of the comment see OMHST’s response to Comment 10.1(b); for the clarification part of the comment,

OMHST shall delete at the end of the sentence “and he shall supervise the foreman or his assistants.” The Rule will now read:

The mine foreman or assistant mine foreman shall examine all working places ~~in the pit at the surface mine~~ under his supervision for hazards at least once every four (4) hours during each working shift, or more often if necessary for safety. Upon completion of the examination(s) the foreman shall record the results and time(s) in a book prescribed by the Director. The mine foreman shall also, each day, read carefully and countersign with ink or indelible pencil all reports entered in the record book by the mine foreman or his assistants on the prior shift.

10.5 - This comment is accepted. The Rule will now read:

Instructions. -- The mine foreman shall see that every newly employed person ~~employed~~ to work at such mine shall, before the beginning work therein, be instructed in the particular dangers incident to his work exposure in such mine, and be furnished a copy of the state surface mining rules and regulations. A record of such instructions shall be kept and made available upon request by an authorized representative of the Director.

13.3 - Based on this comment OMHST will delete paragraphs (a) through(d).

13.7 - OMHST will add a definition for the word “adequate.” That definition will read “sufficient for a specific requirement.” Equipment lights will be sufficient if it provides illumination sufficient for a worker to safely dump.

13.8(b) - This comment is a question rather than a comment. If the “steep slope condition” is steeper than 2:1 it meets the definition of an extreme slope. There will be no change to the text of the Rule based on this comment.

14.4(f) - Based on this comment, OMHST will modify the rule. The Rule will now read: to read

Threads on all drill steels and attached components shall be maintained to provide secure attachment.

14.5(d) - Based on this comment, OMHST shall modify the Rule to read:

No holes shall be drilled atop the highwall within six (6) feet of the edge of the highwall. Drills shall not be

positioned atop the highwall where safe egress from the operator's cab cannot be maintained.

There are no height limitations for a highwalls.

15.1(j) – Based on this comment and the comments received from Nelson, Massey and the UMWA, the Rule shall read as follows:

Maintenance and examinations shall be performed on the emulsion pump in accordance with the manufacturer's safety specifications. A record of the examinations shall be kept with the vehicle for one year and made available to a representative of the Director, and an authorized representative of the miners, upon request.

15.3(b) - OMHST will not accept this comment. The Rule as written is sufficient "posted at the mine" has always meant posted on the bulletin board and the company performing the blasting shall perform the training.

15.3(d) – This comment is the same as the comment made by Nelson Brothers. The comment is adopted and the Rule now reads:

Explosives, ~~blasting caps and electric blasting caps~~ and detonators shall not be carried in pockets of clothing or left lying around unguarded.

15.3(e) - Based on this comment, OMHST will modify the rule to read:

The use of explosives and handling incident thereto, ~~will~~ shall be discontinued during the approach of and during whenever lightning is seen or thunder is heard, or a thunderstorm and/or electrical storm is detected and all personnel shall be withdrawn from the blast area. When drills are being operated on a bench with loaded holes, or holes being loaded, masts shall be lowered upon the approach of a thunderstorm and/or electrical storm.

15.3(h) - This comment is similar to the comment presented by Nelson Brothers and the Rule was modified to read:

Driving vehicles or dragging boxes over firing lines, detonator wires, explosives, blasting agents, and detonators shall be prohibited. ~~The backing of drills over loaded holes shall be prohibited.~~ Mobile equipment and vehicles shall not be trammed or driven over loaded holes.

15.4(c) - Based on this comment, OMHST will modify the Rule to read:

Only drills, explosives trucks, mobile equipment suitable for hole stemming, and equipment necessary ~~No equipment except the drill and explosive truck, other than necessary equipment~~ for road repairs to remove the drills or explosive trucks, shall be permitted to work within fifty (50) feet of the entire column of loaded holes or holes being loaded. Mobile equipment such as small front end loaders and other suitable hole stemming equipment shall be allowed to assist hole stemming procedures where adequate hole diameters are drilled and an adequate distance is provided between holes and rows of holes to ensure the safe operation and movement of equipment. The use and operation of all equipment used to stem holes shall be under the direct supervision of a certified blaster. ~~Equipment powered by external electrical sources and power cables shall be prohibited from being within one hundred (100) feet of loaded holes or holes being loaded; where such equipment is being used and electrical detonators are being used, stray current test shall be made on the bench prior to commencing the loading of holes, if current is detected, such power cables be moved to a safe distance or the power cables shall be deenergized. When the equipment indicated above has malfunctioned and cannot be removed from the area, the blaster and certified foreman shall direct the use of maintenance equipment if required to safely repair and/or remove the disabled equipment from the area. Adequate precautions shall be taken to prevent extraneous electricity from entering an electrical blasting circuit. Electrically-powered equipment and trailing cables shall be prohibited from being within one hundred (100) feet of loaded holes or holes being loaded. When a potential source of extraneous electricity is present within three hundred (300) feet and electrical detonators are to be used, a stray current test shall be made on the bench prior to commencing loading holes; if current is detected, the source of the extraneous electricity shall be neutralized before loading may begin.~~

15.4(q) – Based on this comment, OMHST will modify the Rule to read:

When loading beneath highwalls, the highwall shall be carefully inspected by the blaster and foreman in charge before beginning the loading process. Persons shall not load boreholes in areas where the highwall is cracked,

shows evidence of movement or weakening, or has loose material falling from the highwall. For those surface mines that do not employ five or more persons in a period of twenty-four hours and that do not have a certified mine foreman, the mine operator shall designate a competent person, as defined in 56 CSR § 3.3.87, to perform the duties of the foreman in charge set forth in this section. The name of the designated competent person shall be recorded and such record shall be made available upon request.

15.4(r) - Based on this comment, OMHST will modify the Rule to read:

Boreholes shall not be located within six (6) feet of the outer edge of the highwall where such location could create a danger of falling over the highwall by persons loading boreholes. Persons loading boreholes shall not work within six (6) feet of the outer edge of the highwall.

15.5(c) - OMHST will adopt this comment. The Rule will now read:

When shooting highwall and overburden, the firing/lead lines shall be at least five hundred (500) feet in length. ~~when new and never less than four hundred fifty (450) feet.~~

15.5(j) – OMHST adopts this comment and will modify the Rule to read:

When using electric or electronic detonators, adequate precautions shall be provided to prevent accidental electrical shock to the person(s) detonating the blast. Provisions may include, but not be limited to, insulating and guarding the firing/lead line connections to the firing device or blast controller, providing and using insulating mats on which the blaster may stand and also place under the firing device or blast controller, the use of an additional properly-timed detonator placed in the firing/lead line to sever the line and prevent the possibility of electrical feedback to the firing device, blast controller, or remote firing device.

15.6(d) – OMHST declines to adopt this comment. The Rule speaks for itself and provides a higher level of safety.

15.7(b) - OMHST declines to adopt this comment. Dust, smoke and fumes are dangerous to breath and no one should be in that area until it is clear.

15.8(d) - OMHST declines to adopt this comment because even with electronic detonators, disconnecting is the only safe method.

17.6(a) - Based on this comment, OMHST will modify the Rule to read:

On all active surface mines, a designated area shall be provided for parking of employees' vehicles. All employees shall park their personal vehicles at the designated parking area. Adequate illumination shall be provided at all parking areas, and parking areas shall be maintained in good condition.

20.11 - Based on this comment, OMHST will modify the Rule to read:

Persons entering a mine – Only persons authorized by the mine operator shall be permitted to enter a surface mine. The mine operator shall develop a plan to account for those authorized persons while at the surface mine. The plan shall be available to a representative of the Director upon request.

21.6(g) - Based on this comment, OMHST will add the following definition of “temporary splice” to the definition section of the Rule.

Temporary Splice. – The term “temporary splice” shall mean a splice that is mechanically strong, flexible, provides adequate electrical conductivity, is effectively insulated and sealed so as to exclude moisture. A temporary splice is not required to be “vulcanized” or fitted with a permanent, approved outer jacket.

There is no documentation requirement.

26.1(a) – Based on this comment, OMHST will modify the Rule to read:

Immediately prior to the beginning of each working shift, all equipment except licensed vehicles subject to state highway inspection requirements shall be examined by the equipment operator or a mechanic if designated by the foreman in charge of the operation daily for safety defects. The person performing such examination shall record his findings in ink or indelible pencil on a form approved by the director; such form shall be given to the mine foreman or his assistant within four (4) hours after the beginning of the start of the working shift. The person performing the above examination shall sign the report form and the

foreman receiving such form, shall initial upon receipt. A ~~record of all above~~ copy of all such examinations shall be maintained for thirty (30) days remain with the equipment for thirty (30) days and made available to an authorized representative of the director and to the miners at the mine.

26.1(c) – Based on this comment, OMHST will modify the Rule to read:

Imminent danger equipment defects shall be reported immediately to the mine foreman, tagged out, and corrected before the equipment is put into operation. The mine foreman shall record the defect in the pre-shift book prior to the beginning of the next shift.

26.2(a) – Based on this comment, OMHST will modify the Rule to read:

No person(s) shall enter the work area of any mobile equipment during operation until first making positive contact, either audible or visual, with the equipment operator(s). Equipment operators shall cease operating their equipment when any person is within such proximity as to be endangered.

26.7(k) – Based on this comment, OMHST will modify the Rule to read:

Electrical compartments in use on electrically powered mobile equipment shall be maintained free of dust, water, and oil accumulations. Electrical compartment panel doors shall be secured in a manner that prohibits access. Only certified electricians or a trained manufacturer's representative who is supervised by a certified electrician shall access the panels.

26.7(l) – Based on this comment, OMHST will modify the Rule to read:

Wheel covers (hubcaps) shall be provided for electric wheel motors, shall be maintained in good condition, and shall be adequately secured so as to prevent movement during travel.

26.8(d) - OMHST declines to adopt this comment. Adequate mirrors will be interpreted in the manner it is currently interpreted under 36 CSR 27-12.1

26.10(e) – Based on this comment, OMHST will modify the Rule to read:

Cabs of mobile equipment shall be kept free of extraneous materials and adequately ventilated. Enclosed cabs of mobile equipment manufactured after the effective date of this Rule shall be adequately ventilated by heaters, defrosters, and air conditioners.

26.15(o) – Based on this comment, OMHST will modify the Rule to read:

All hand-held tools, power tools and safety devices shall be used and maintained in accordance with manufacturer's safety specifications. This does not preclude the requirements for control locking devices as stated in 56 CSR 3-26.15(b).

26.21(b) – OMHST declines to adopt this comment. In response to the comment mine wide meetings are sufficient. However, if condition on any site specific extreme slope within that mine differs from the conditions discussed in the mine wide meeting, a second meeting must occur to develop a written plan as to how to work on that extreme slope safely.

26.21(b)(3) – Based on this comment, OMHST will modify this subsection to read:

Geological characteristics of the material on the extreme slope, weather conditions, and visibility;

26.21(f) - OMHST will accept this comment and delete paragraph (f).

26.21(g) - Based on this comment, OMHST will modify the Rule (now 26.21(f)) to read:

While working on an extreme slope, a sufficient landing area shall be maintained at the bottom of the slope work area consistent with the size of the equipment.

26.21(m) – This comment now applies to 26.21(k). Based on this comment, OMHST will modify the rule to read:

Communications, either audible or visual, shall be maintained between equipment operators while working on extreme slopes. No one shall work on an extreme slope alone.

27.13(a) – OMHST declines to adopt this comment. Based on an earlier comment, the term “adequate” is now defined in the definition section.

27.13(e) – OMHST declines to adopt this comment (now 27.13(d). Security is the coal operator's responsibility.

56-3-48.1(c) – OMHST accepts this comment and will delete all of 56-3-48.

Massey Coal Services comments

General comments;

- Throughout the Rule references to the National Electric Code (NEC) are specified as either the "current" NEC or the "current" NEC at a specific time such as when installed.
- These words are defined throughout the Rule.
- The differences between types of highwall miners were considered and changes have been made to the Rule to reflect those differences.
- This Rule is intended to provide a higher level of safety than that required by the ATF.

3.3 - OMHST declines to adopt this comment.

3.9 - Based on this comment, OMHST will modify the definition of surface miner to read:

Surface Miner. -- The term "Surface Miner" shall mean any individual working on ~~or around~~ a surface mine. ~~who is employed by the operator.~~ This definition does not include vendors, visitors, and other invitees of the coal operator who are not performing surface mine duties.

3.42 - OMHST declines to adopt this comment. This definition is taken from the definition in the Code (W. Va. Code § 22A-1-2(e)(6)). OMHST will correct the typographical error. The rule will read:

The term "Delta Connected" shall mean a power system in which the windings or transformers or ~~S.C.~~ A.C. generators are connected to form a triangular phase relationship, and with phase conductors connected to each point of the triangle.

3.43 - OMHST declines to adopt this comment. This definition is taken from the definition in the Code (W. Va. Code § 22A-1-2(e)(7)).

3.44 - OMHST declines to adopt this comment. The Rule as filed contains this correction.

3.45 - OMHST declines to adopt this comment. This definition is taken from the definition in the Code (W. Va. Code § 22A-1-2(e)(9)).

3.48 - OMHST declines to adopt this comment. This definition is taken from the definition in the Code (W. Va. Code § 22A-1-2(e)(9)).

3.49 - OMHST declines to adopt this comment. This definition is taken from the definition in the Code (W. Va. Code § 22A-1-2(e)(13)).

3.52 - OMHST declines to adopt this comment. This definition is taken from the definition in the Code (W. Va. Code § 22A-1-2(e)(16)).

3.53 - OMHST declines to adopt this comment. This definition is taken from the definition in the Code (W. Va. Code § 22A-1-2(e)(17)).

3.55 - OMHST declines to adopt this comment. This definition is taken from the definition in the Code (W. Va. Code § 22A-1-2(e)(19)).

9.2 – OMHST adopts this comment and the Rule now reads:

No person shall be qualified for testing for methane and for oxygen deficiency unless each such person has been trained and demonstrates to the satisfaction of an authorized representative of the Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training that he is qualified to test for methane with ~~a flame safety lamp or another~~ an approved methane detectors. Records of such examinations shall be kept by the operator and the Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training.

Persons whose duties require them to use ~~a flame safety lamp and other~~ approved detectors, that have been qualified by the ~~Department of Energy~~ Office of Miners' Health, Safety and Training to test for methane and oxygen deficiency, shall be examined at least annually to their competence by a certified mine foreman and a record that such examination was given, together with pertinent data relating thereto, shall be kept on file by the operator and a copy shall be furnished to the ~~department of energy~~ Office of Miners' Health, Safety and Training.

Persons whose duties require them to administer the annual examinations for methane and oxygen deficiency shall be examined annually by a qualified official from the ~~Department of Energy~~ Office of Miners' Health, Safety and Training. Each operator shall provide for the proper maintenance, and before each shift, care shall be taken to insure that such ~~lamp or other device~~ approved detector is

in a permissible condition. ~~Flame safety lamps~~ Approved detectors shall be given proper maintenance and inspection before each working shift in a manner recommended by the manufacturing company and approved by the ~~Director of the department of energy~~ Office of Miners' Health, Safety and Training. Other approved gas detectors shall be given proper maintenance and shall be tested in accordance with the manufacturer's recommendations before each working shift and calibrated each thirty (30) calendar days.

10. - OMHST interprets this to be a comment directed to 10.1(b). This comment was addressed in the responses to Apogee's comments.

10.2(b) - OMHST declines to adopt this comment. This is not duplicative of existing preshift requirements.

10.5 - OMHST declines to adopt this comment. The sections noted (10.5 and 9.1) are not duplicative provisions.

13. - Based on the comment from Apogee Coal Co., all references to "ground control plans" have been deleted.

13.3(c) and (d) - Based on the comment from Apogee Coal Co., all references to "ground control plans" have been deleted.

13.3(g) - Based on this comment, OMHST will modify the Rule (now 13.3(c)) to read:

Trees endangering workmen along highwalls shall be removed. If trees creating a hazard cannot be removed, the pit area below the hazardous trees shall be barricaded and no workers shall enter the barricaded area. Such work shall be completed during daylight hours.

13.3(i) - OMHST will accept this comment. The Rule will read:

Persons, other than those designated to correct unsafe conditions, shall not work near or under dangerous highwalls or banks.

13.7 - OMHST declines to adopt this comment. In the responses to Apogee Coal Co. comment, the term "adequate" was defined.

13.8(c) - Based on this comment, OMHST will add to the definition section of the Rule a definition for the term "tension crack." The definition will read:

Tension crack – The term “tension crack” shall mean a crack resulting from movement of material that may signal failure of the stability of the material.

15.1(j) – Based on this comment and the comments received from Nelson Brothers, Apogee Coal Co. and the UMWA, the Rule shall read as follows:

Maintenance and examinations shall be performed on the emulsion pump in accordance with the manufacturer’s safety specifications. A record of the examinations shall be kept with the vehicle for one year and made available to a representative of the Director, and an authorized representative of the miners, upon request.

15.3(b) - OMHST declines to adopt this comment. All explosives should be transported, stored, handled and used in accordance with the current Institute of Makers of Explosives Warnings and Instructions.

17.2(d) - Based on this comment, OMHST will modify the Rule to read:

Berms or guards shall be provided ~~where required~~ on the outer bank of ~~elevating~~ elevated roadways.

17.2(j) - OMHST declines to adopt this comment. A grandfather provision still remains.

17.4(k) - Based on this comment and other comments received, OMHST will modify the Rule to read:

Operators of equipment used to haul coal exclusively or principally on mine permitted property shall possess a surface miners’ certification or an apprentice surface miner certification. Provided that, anyone performing these duties prior to the effective date of this regulation who possesses verification of more than six (6) months of employment and more than one hundred eight (108) shifts at a surface mine shall be granted a surface miners’ certification once he/she successfully completes the surface miner examination administered by the Office of Miners’ Health, Safety and Training.

17.6(c) - OMHST declines to adopt this comment. The Rule does not specify portable or installed 2-way communications.

19.1(b) - Based on this comment, OMHST will modify the Rule to read:

Highwalls shall be safely constructed to minimize danger to workers. Techniques such as (1) pre-splitting highwalls, (2) angle drilling, (3) safety benches and (4) scaling of loose/hazardous materials, brows, and overhangs may be implemented to enhance the safety of the highwalls.

19.1(d) - OMHST will adopt this comment and remove the word “approve.”

19.1(e) - Based on this comment, OMHST will modify the Rule to read:

The face of all highwalls, for a distance of one hundred (100) feet on both sides of the highwall miner, shall be inspected by the foreman before any mining operation shall be performed.

19.1(f) - OMHST will adopt this comment and replace the word “sufficient” with the word “a.”

19.1(g) - OMHST will adopt this comment. The Rule now reads:

Only persons authorized by mine management shall be allowed in the area where highwall mining is being conducted.

19.1(h) - OMHST will adopt this comment and delete subsection 19.1(h).

19.1(j) - Based on this comment, OMHST will modify the Rule to read:

No smoking shall be permitted within one hundred fifty (150) feet of highwall miner openings. No smoking signs shall be conspicuously posted in the pit where the highwall miner is operating or in pits where highwall miner openings are present.

19.1(k) - Based on this comment, OMHST will modify the Rule to read:

Records and maps shall be kept showing the width, depth, spacing and typical height of all entries mined.

19.1(l) - OMHST declines to adopt this comment. This section is needed for map archiving purposes.

19.1(h) - This comment is referenced under the wrong section of law. The correct section is 19.1(m) (now (l)). Based on this comment, OMHST will modify the Rule to read:

All maintenance on the continuous highwall miner shall be performed a safe distance away from the highwall. For continuous highwall miners equipped with canopy protection, the continuous highwall miner shall be pulled back under the canopy for servicing or routine maintenance.

19.2(b) - Based on this comment, OMHST will delete subsection (b).

19.3(b) - OMHST declines to adopt this comment. See also, response to Alpha Engineering's comment on this subsection.

19.4(c) and (f) - OMHST declines to adopt these comments. Both subsections are needed to enhance the safety of workers.

19.4(l) - OMHST declines to adopt this comment. This subsection, as written, enhances worker safety.

19.4(m) - OMHST declines to adopt this comment. Handrails are needed to provide safety on all elevated platforms and walkways.

19.4(n) - Based on this comment, OMHST will modify the Rule to read:

All highwall miners that are equipped with unguarded belt conveyance systems shall have panic lines/pull cords installed and in place directly beside the unguarded conveyor belt (belly belt) at all times when the belt is running and the highwall miner cars are not in position above the belt acting as a guard. When panic line/pull cords are detached to facilitate adding or removing highwall miner cars, workers shall follow a procedure that does not expose them to working above the running unguarded conveyor belt.

19.5(a) - OMHST will adopt this comment. The Rule will now read:

No person or persons, other than the highwall miner crew, shall be allowed on or around the highwall miner when in operation unless authorized by mine management.

19.5(b) - Based on this comment, OMHST will modify the Rule to read:

The operator shall not leave the controls while the highwall miner is being operated. Before leaving the controls for any reason, the operator shall place controls in the neutral

position and de-activate the controls to prevent accidental activation of the controls.

19.5(c) - OMHST will adopt this comment. The Rule now reads:

No persons shall work under suspended loads. Where required, suspended loads shall be controlled with the use of tag lines or equivalent systems.

19.5(d) - Based on this comment, OMHST will modify the Rule to read:

Persons shall not cross over belt conveyance cars or unguarded conveyor belts while in motion. Persons shall keep clear of all conveyance system sections being swung, lowered, loaded or removed.

19.6(e) - Based on this comment, OMHST will modify the Rule to read:

If at any time methane levels of one (1) percent or greater are detected, mining shall cease until the methane levels are reduced to levels less than one (1) percent.

19.7(a) - Based on this comment, OMHST will modify the Rule to read:

All cable reels shall be guarded or positioned to prevent persons from being injured when the reel is operated.

20.4 - Based on this comment, OMHST will delete “within 150 feet of highwall miner openings.”

20.5(a) - Based on this comment, OMHST will define the term “high pressure” in the definition section and modify 20.5(a) to read:

Safety chains or suitable locking devices shall be used at connections to machines or high-pressured hose lines.
~~where a connection failure would create a hazard.~~

20.5(c) - OMHST declines to adopt this comment. The Rule as written enhances worker safety.

20.11 - OMHST will adopt this comment. The Rule will now read:

Persons entering a mine – Only persons authorized by the mine operator shall be permitted to enter a surface mine. The mine operator shall develop a plan to account for those

authorized persons while at the surface mine. The plan shall be available to a representative of the Director upon request.

21.1(a) – OMHST declines to adopt this comment. The change proposed by the comment would reduce miner safety.

21.2(d) – OMHST declines to adopt this comment. The change proposed by the comment would reduce miner safety.

21.3(d) – Based on this comment, OMHST will modify the Rule to read:

All electric conductors shall be sufficient in size and have adequate current carrying capacity and be of such construction that a rise in temperature resulting from normal operation will not damage the insulating materials. In no case will the requirements be less than set forth in the ~~current~~ National Electric Code in effect at the time of installation.

21.3(e) – OMHST declines to adopt this comment. The change proposed by the comment would reduce miner safety.

21.3(f) – OMHST declines to adopt this comment. The change proposed by the comment would reduce miner safety.

21.3(h) - OMHST declines to adopt this comment. This identical language is found in the article of the Code that applies to underground mines (W. Va. Code § 22A-2-40(64)), and it is the position of OMHST that this same requirement should apply to surface mines.

21.4(b)(2) – OMHST declines to adopt this comment as it would reduce miner safety.

21.5(e) – OMHST will adopt this comment. The Rule will now read:

Power circuits serving three (3) phase alternating current equipment serving portable or mobile equipment shall be protected by suitable circuit breakers of adequate interrupting capacities which are properly tested and maintained as prescribed by the ~~e~~Director. Such breakers shall be equipped with devices to provide protection against under voltage, grounded phase, and short circuit protection. ~~and over current.~~

21.6(i) - OMHST declines to adopt this comment. This identical language is found in the article of the Code that applies to underground mines (W. Va. Code § 22A-2-40(77)), and it is the position of OMHST that this same requirement should apply to surface mines.

21.7(c) – OMHST declines to adopt this comment because it would reduce the safety of miners working around other types of electrical equipment. Waivers are readily available through this subsection.

21.7(g) – OMHST will adopt the comment and the Rule now reads:

Guy wires from poles supporting high voltage power lines shall be securely connected to the system grounding medium or shall be provided with insulators rated at the highest voltage installed ~~near the pole end~~ as required below phase conductors of the high voltage power line.

21.8(f) – Based on this comment, OMHST will modify the Rule to read:

All electrical wiring and equipment ~~installed~~ shall meet the requirements of the ~~current~~ National Electrical Code in effect at the time of installation.

21.9(a) – OMHST declines to adopt this comment because the proposed comment reduces miner safety and also because the Rule pertains to high voltage lines not all lines.

21.9(l) - Based on this comment, OMHST will modify the Rule to read:

High voltage cables used in ~~resistant~~ resistance grounded systems shall be equipped with metallic shields around each power conductor with one (1) or more ground conductors having a total cross sectional area of not less than one-half (1/2) the power conductor and with an insulated internal or external conductor not smaller than #10 A.W.G. for the ground continuity check circuit if required.

21.11(e) – OMHST declines to adopt this comment. This is the original language of the Rule in effect now. This rule has not created an enforcement problem to date.

21.11(h) – OMHST declines to adopt this comment as the proposed comment reduces miner safety.

25.1 - OMHST will adopt this comment and the Rule will now read:

Men exposed for short periods to gas, dust, fume, and mist inhalation hazards shall wear ~~permissible~~ approved respiratory equipment. Dust shall be controlled by the use of permissible dust collectors or ~~other approved~~ equivalent methods.

26.1(c) - OMHST declines to adopt this comment because the proposed comment reduces miner safety.

26.1(d) - OMHST declines to adopt this comment because the proposed comment reduces miner safety.

26.2 - OMHST declines to adopt this comment because the section header references more than just large mobile equipment.

26.2(a) - Based on this comment and the comment received from Apogee Coal Co., OMHST will modify this Rule to read:

No person(s) shall enter the work area of any mobile equipment during operation until first making positive contact, either audible or visual, with the equipment operator(s). Equipment operators shall cease operating their equipment when any person is within such proximity as to be endangered.

26.2(c) - OMHST adopts this comment. The Rule now reads:

Equipment operators shall not leave their cabs without lowering all raised equipment to the ground unless equipment failure is experienced.

26.6(c) – OMHST declines to adopt this comment as the proposed comment reduces miner safety.

26.6(k) - OMHST declines to adopt this comment because there is no corresponding section of the law and the agency is unable to determine which Rule the comment applies too.

26.7(l) – OMHST declines to adopt this comment. The agency is not aware of any electric wheel motors without wheel covers.

26.16 - OMHST interprets this comment to be in reference to 26.16(a). Based on that interpretation, OMHST will modify the Rule to read:

The manufacturer's rated capacity shall be legibly marked on all lifting jacks and shall not be exceeded. All jacks shall be maintained and used in accordance with the manufacturer's safety specifications and safety instructions.

26.17(a) - Although OMHST declines to adopt this comment, it does modify the Rule to read:

Mechanically operated grinding wheels shall be equipped with safety washers, substantial retaining hoods and approved eye shields. Safety glasses, goggles, or approved face shields shall be provided and located at the grinding location and shall be worn by persons when using the machine.

26.21 and 3.86 - OMHST declines to adopt this comment. The Rule clearly states that an extreme slope is 2:1 or greater.

31.3 - OMHST declines to adopt this comment. See 56-3-31.3(a) and (b).

48 - Based on a comment from Apogee Coal Co., OMHST deleted all of section 48.

Alpha Engineering Services, Inc. (Alpha) comments

Alpha makes three general statements (points) in the cover letter accompanying their comments. OMHST will address those statements in order.

1. Alpha comments in general that the definitions and terms in the proposed regulation lack specificity and clarity. OMHST declines to modify the Rule based on this general statement since OMHST is unsure which definitions and terms Alpha believes are unclear.

2. Alpha comments that the inclusion of manufacturer's specifications "by reference" is "not a good idea and is likely illegal." OMHST declines to modify the Rule based on this general statement. OMHST believes that following the manufacturer's safety specifications and safety instructions is important to safety. The manufacturer is the entity most familiar with the item manufactured and would know best the manner in which it should be used. Furthermore, Alpha cites no law in support of its statement that the use of such specifications and instructions are "likely illegal." Thus, OMHST is unable to comment appropriately.

3. Alpha comments that the mapping requirements for surface and augering/highwall mining needs rethinking. Based on other specific comments received by OMHST, the mapping requirements have been significantly changed.

Alpha's specific comments are as follows:

10.1(b) - OMHST declines to adopt this comment because in the interest of safety all pre-shift/on-shift books must be countersigned.

10.1(c) - OMHST declines to adopt this comment for the same reasons as stated under Apogee Coal Co.'s comments.

10.2(a) - OMHST declines to adopt this comment. The foreman's preshift/onshift book must be kept at a designated station.

10.5 - Based on this comment, OMHST will modify the rule as

The mine foreman shall see that every newly employed person ~~employed~~ to work at such mine shall, before the beginning work therein, be instructed in the particular dangers incident to his ~~work~~ exposure in such mine, and be furnished a copy of the state surface mining rules and regulations. A record of such instructions shall be kept and made available upon request by an authorized representative of the Director.

13.3(a) (b) and (c) - Based on a previous comment from Apogee Coal Co., OMHST deleted the ground control plan requirements from the Rule. The sections deleted were 13.3(a) through (d).

13.4(a) - OMHST declines to adopt this comment. The reference to a highwall failure was removed when the ground control plan sections were deleted. See response to comment 13.3(a) (b) and (c), above. Slide is a common surface mining term and has existed in the unchanged regulations for over twenty-five (25) years.

13.8(a) through (e) - OMHST declines to adopt this comment. The language of the Rule is clear.

19 - OMHST declines to adopt this comment. Although highwall mining safety issues have not previously been addressed in a Rule, language very similar to that used in this Rule has been included in Comprehensive Mine Safety Programs for years.

19.1(c) and (d) - OMHST declines to modify the Rule based on this comment. However, the assumption made in this comment is correct.

19.1(i) - Based on this comment, OMHST will modify the Rule (now 19.1(h)) to read:

Completed entries shall be blocked with highwall spoil to a minimum height of one foot above the highwall miner openings and to within one thousand (1000 feet) of the active workings. Adequate precaution shall be taken to insure against unauthorized entry when any highwall miner openings are not blocked.

19.1(j) - OMHST previously modified this Rule to address Alpha's concern through a comment made by Massey.

19.1(l) - Based on this comment, OMHST will modify this section of the Rule (now 19.1(k)) to read:

At the close of the highwall mining operation, maps shall be submitted to the Office of Miners' Health, Safety and Training for map archiving purposes showing the records in 56 CSR § 3-19.1(k) in a manner such that the maps can be referenced to the West Virginia State Plane Coordinate System. Mining that has occurred after the effective date of these regulations shall be certified by a West Virginia Registered Professional Engineer. A combination of approximate and surveyed locations is permitted, so long as the certified map clearly denotes such.

19.2(b) - Based on a previous comment, OMHST deleted section 19.2(b) from the Rule.

19.3(a) and (b) - Based on this comment, OMHST will delete section 19.3(b) and modify 19.3(a) to read:

Highwall mining within two hundred (200) feet of any well, or into and through any well, shall be in accordance with W. Va. Code § 22A-2-75(b).

19.4(a)(3) - OMHST declines to adopt this comment. This section is necessary to safeguard workers.

19.4(l) – OMHST declines to adopt this comment. This section is necessary because it is in the interest of safety to use insulated workmen's gloves whenever energized portable trailing cables are handled regardless of the voltage contained therein.

19.6(a) - OMHST declines to adopt this comment. This section of the Rule was modified to include levels of methane in response to a Massey Coal Services comment. Suitable extendable probes may be used to perform the test.

19.6(e) - OMHST has addressed this comment in response to a comment made by Massey Coal Services.

19.6(g) - OMHST declines to adopt this comment. This section of the Rule is self-explanatory.

20.2. - Based on this comment and a comment received from the UMWA, this section has been modified to read:

Alcohol and drugs - Persons under the influence of alcohol or drugs shall not be permitted on a surface mine or attendant facility.

20.10. - OMHST declines to accept this comment. This section does not address the frequency of workers drinking water.

20.11. - OMHST has addressed this comment in response to comments received from Massey Coal Services and Apogee Coal Co., LLC.

21.2(d) - OMHST declines to adopt this comment. No grandfather period is necessary since this can be updated with minimal time and expense.

21.2(h) - OMHST declines to adopt this comment. No grandfather period is necessary since this can be updated with minimal time and expense.

26.2(b) - OMHST will adopt this comment and modify the section to read:

At startup or anytime mobile equipment is stopped, other than during the normal work cycle, Operators of shovels, draglines, and backhoes shall sound a signal distinguishable from the surrounding noise level such as a whistle, bell, horn or other approved device, before moving forward or backward, and all persons not in the clear shall respond immediately. Provided, passenger vehicles and light trucks are excluded from this requirement.

26.15(o) - OMHST declines to adopt this comment. Following the manufacturer's safety specifications and safety instructions are critical for safe operation.

26.21(b) - OMHST declines to adopt this comment. Specific plans need to be developed based on variables listed in this section. Plans will change as conditions warrant. Management controls persons required to participate in the plan.

27.13(a) - OMHST declines to adopt this comment. Illumination will not result in reducing diameter of escape tunnels.

27.12(e) - Based on this comment, OMHST will modify this section of the Rule (now 27.13(d)) to read:

Self Contained Self Rescuers for all persons working in the drawoff tunnel shall be provided and stored near the entrance to the escapeway. All persons required to work in the drawoff tunnel shall be trained in the proper use of self-contained self rescuers (W. Va. Code § 22A-2-55(f)(1)) prior to working therein. Self-contained self rescuers shall be maintained in safe operable condition.

48.1, *et seq.* - Based on previous comments received, as well as this comment, OMHST has deleted all of section 48 from this Rule and modified the language found 19.1(j) and (k).

COAL ASSOCIATION COMMENTS

Email Pamphlet 1 of 3

General comments:

1. As stated in the Summary of the Rule and Statement of Facts and Circumstances filed with the Secretary of State on June 2, 2009, there is a need for this Rule. 56 CSR § 3-1, *et seq.*, has been in existence since 1991. Since that time many technological advances have occurred in the manner in which surface mining is conducted. This Rule is intended to modernize the Rules and Regulations pertaining to surface mining to account for those changes in technology. Also, many additional safety issues have arisen since 1991, and those safety issues have been addressed in this Rule. Additionally, two new sections of law have been added, one relating to highwall mining and the other relating to operating equipment on extreme slopes.

The Director has the authority pursuant to W. Va. Code § 22A-1-38 to promulgate these Rules. Under this authority, the Director has no obligation to present these Rules to the Board of Coal Mine Health & Safety before filing. The Director has filed these Rules through the legislative rule making process, so these Rules will ultimately be presented to the Legislature.

2. W. Va. Code § 22A-1-38 clearly authorizes the Director to propose and promulgate these Rules.

3. W. Va. Code § 22A-1-38 does not require the agency to analyze the fiscal impact these Rules may have on the mining industry.

The Coal Association's comments are numbered. OMHST will respond to the comments by first using the number given to the comment by the Coal Association and then will refer to the specific section of the Rule in the response.

1. This comment addresses section 10.1(a). OMHST modified this section in response to a comment received from Apogee Coal Co., LLC. Thus, the Coal Association's comment has been previously addressed and the Rule modified accordingly.

2. This comment addresses section 10.1(c). This comment is similar to one made by Apogee Coal Co., LLC. OMHST declined to adopt the comment from Apogee (See Apogee Responses) and also declines to adopt this comment from the Coal Association.

3. This comment addresses section 10.5. OMHST declines to adopt this comment. See Response to Apogee Coal Co.'s comment. This section relates to newly employed miners.

4. This comment addresses section 13.3(c). Based on previous comments, OMHST has deleted section 13.3(c).

a. This comment addresses the ground control plan found in sections 13.3(a) through (c). Based on previous comments, OMHST has deleted the ground control plan requirements. The sections deleted were 13.3(a) through (d).

b. This comment addresses 13.3(g). Based on a previous comment, OMHST has reworked the language of this section. Thus, the Coal Association's comment is addressed.

5. This comment addresses 13.4(a). The proposed Rule did not amend this section. The term "slide" has been in the regulations for over 25 years and the use of that term has not created an enforcement problem.

a. This comment addresses section 13.8(a). OMHST declines to adopt this comment. Berm section of fill or lift has no compaction, does not provide safe stability for rock trucks.

b. This comment addresses 13.8(b). Based on this comment, OMHST will modify this section to read:

Should the outer slope of the fill become steeper than the safe angle of repose, short-dumping procedures shall be initiated. Equipment operators and truck drivers operating on the fill will be informed of the steep slope condition and will be required to dump a minimum of one truck length from the edge of the fill. Material shall be pushed with a dozer until safe angle of repose is established.

6. This comment addresses section 14.5(d) and (e). As to 14.5(d), OMHST modified this section in response to comment received from Apogee Coal Co. That modification addresses the Coal Association's concern. As to 14.5(e), OMHST will modify the section to read:

When drilling near the base of a highwall, the drill shall be positioned so the operator's cab is on the side of the drill away from the highwall.

7. This comment addresses section 15.3(e). Based on the responses to Apogee Coal Co. and the responses to the UMWA's comments, this comment has already been adopted.

8. This comment addresses section 15.3(i). Based on this comment, OMHST will modify the Rule to read:

Explosives of nitroglycerin base known to be previously frozen shall not be used. Deteriorated or damaged explosives and detonators shall be destroyed by an authorized representative of the manufacturing company.

9. This comment addresses section 15.4(q). OMHST declines to adopt this comment. The Foreman's responsibilities are defined in sections 10.1 and 10.2.

a. This comment addresses section 15.4(r). Based on the response to Apogee Coal Co.'s comment, OMHST has previously modified the Rule to address the concern raised by the Coal Association.

10. This comment addresses section 17.4(k). OMHST modified this Rule based on a previous comment. This Rule applies to surface mines as defined under the Rule. It is not intended to apply to the surface area of an underground mine.

a. This comment addresses section 17.6(a). OMHST declines to adopt this comment. Mine management shall be responsible for designating the location.

11. This comment addresses section 19.1(l). OMHST declines to adopt this comment for the same reasons as stated in the response to Alpha Engineering.

a. This comment addresses sections 19.6(f) and (g). Based on this comment, OMHST will modify those two sections to read:

(f) When a highwall miner opening penetrates an abandoned mine or mined out area(s) of an underground mine, mining shall cease immediately and tests for methane and oxygen deficiency shall be made at the highwall miner opening by a qualified person using an extendable probe. These tests shall be made using approved devices to determine if dangerous quantities of methane and/or oxygen deficient air are present or being emitted. If such is found, no further work shall be performed until the atmosphere is made safe.

(g) The highwall miner shall be equipped with a monitoring device that will alert the operator when methane levels reach concentrations of 1.0%, at which time the cutter head will be lowered and the machine shut down. All launch workers, except the person necessary to conduct a methane examination, shall be removed from the immediate area and a methane examination will be conducted at the highwall miner opening. Methane levels will be tested at the highwall miner opening with an extendable probe. When the test at the highwall miner opening cannot detect

significant levels of methane and the mining machine monitor indicates that methane accumulation has dispersed, work may resume. In the event the miner is de-energized when the methane monitor detects 2.0% methane or a 1.0% reading continues for a sustained amount of time, all underground equipment will be de-energized and removed by hydraulic cylinders or other means outside the opening. The opening that was being mined will be abandoned at this time.

b. This comment addresses section 20.2. OMHST adopts this comment to remove the “search” requirement. The Rule will now read:

Alcohol and drugs - Persons under the influence of alcohol or drugs shall not be permitted on a surface mine or attendant facility.

c. This comment addresses sections 20.9, 20.10, and 20.11. Based on this comment, OMHST will modify section 20.10 to read:

Drinking water – An adequate supply of potable water shall be provided by the mine operator for drinking purposes in each surface installation and at each surface worksite of the surface mine. Water transported to all work sites shall be carried, stored and otherwise protected in sanitary containers.

12. This comment addresses section 26.1(c). OMHST declines to adopt this comment. Imminent danger is defined in the definition section of the Rule. Extremely high temperatures in cabs could lead to heat exhaustion, heat stroke or death.

13. This comment refers to section 26.7(k). OMHST declines to adopt this comment. The language in the Rule states “shall be maintained free of dust, water, and oil accumulations.”

14. This comment addresses section 26.10. Based on a comment received from Apogee Coal Co., OMHST modified the language of the Rule in a manner that addresses this comment.

15. This comment addresses section 26.15(o). OMHST declines to adopt this comment. All persons should be familiar with the manufacturers’ safety instructions on safe maintenance and operation of all tools.

a. This comment addresses 26.17(a). OMHST declines to adopt this comment. See response to Massey Coal Services comment.

16. This comment addresses section 26.20(g). OMHST declines to adopt this comment. All tire manufacturers have specifications noting when tires should be replaced.

17. This comment addresses section 26.21. OMHST declines to adopt this comment. This section is written to provide methods to safely work on slopes greater than 2:1.

18. This comment addresses section 27.13(e). OMHST declines to adopt this comment. Several methods are available to protect SCSR's from extreme temperatures, such as insulated coolers, etc.

19. This comment addresses section 31.3(a). OMHST accepts this comment and the Rule now reads:

a) Safety hats and safety toed shoes shall be worn by all persons while in or around a surface mine, tipples or cleaning plants coal handling facilities, and other surface areas. ~~Safety toed shoes shall be worn by all persons while in or around a surface mine, tipple or cleaning plant.~~

~~(b) All surface mine employees shall be required to wear safety helmets when working in areas where there is a possible danger of head injury from impact, or from falling or flying objects, or from electrical shock and burns:~~
Provided, That such employees shall not be required to wear such safety helmet hats while operating machinery equipped with a falling object protective structure which satisfies the impact and penetration requirements established by the American National Standards Institute, Safety Requirements for Industrial Head protection, Standard Z89.1, unless the Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training finds that the dangers set forth herein may be present: **Provided, however,** That such employees shall be required to wear safety ~~helmets~~ hats while not operating such equipment including periods of travel to and from such equipment. The safety ~~helmets~~ hats required hereunder shall meet the specifications for such ~~helmets~~ hats as prescribed by the mine health and safety administration. **Provided, however,** Requirement for hard hats and boots shall not apply to persons working in mine offices.

20. This comment addresses section 47. OMHST accepts this comment and will delete the references to Flame Safety Lamps. The Rule now reads:

47.1. No person shall be qualified for testing for methane and for oxygen deficiency unless such person has been trained and demonstrates to the satisfaction of an authorized representative of the Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training that he is qualified to test for methane with a flame safety lamp or other approved methane detector. Records of such examinations shall be kept by the operator and the Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training.

Persons whose duties require them to use an ~~flame safety lamp and other~~ approved detector, that have been qualified by the ~~Department of Energy~~ Office of Miners' Health, Safety and Training to test for methane and oxygen deficiency, shall be examined at least annually to their competence by a certified surface mine foreman, and a record that such examination was given, together with pertinent data relating thereto, shall be kept on file by the operator and a copy shall be furnished to the ~~Department of Energy~~ Office of Miners' Health, Safety and Training.

Persons whose duties require them to administer the annual examinations for methane and oxygen deficiency shall be examined annually by a qualified official from the ~~Department of Energy~~ Office of Miners' Health, Safety and Training. Each operator shall provide for the proper maintenance and care of the permissible flame safety lamp or any other approved device for detecting methane and oxygen deficiency by a person trained in such maintenance, and before each shift, care shall be taken to insure that such lamp or other device is in a permissible condition.

~~Flame safety lamps~~ Approved detectors shall be given proper maintenance and inspection before each working shift in a manner recommended by the manufacturing company and approved by the director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training. Other approved gas detectors shall be given proper maintenance and shall be tested in accordance with the manufacturer's recommendations before each working shift and calibrated each thirty (30) calendar days.

21. This comment addresses section 48. Based on a comment from Alpha Engineering, section 48 was deleted.

3.4 All comments listed from the bottom of Page 4 of Email Pamphlet 1 of 3 (listed as 3.4) to the last comment on page 8 (1. Page 29 56-3-10(c)) are comments to the Preparation Plant Rules filed by OMHST on June 30, 2009. Thus, all of these comments are unresponsive to the Rules being responded to here.

Page 8 # 1 – This comment pertains to section 10(c). OMHST declines to adopt this comment. Records are essential for subjects covered and persons in attendance to verify individuals training.

Page 9 # 2 – This comment addresses section 10.3. OMHST declines to adopt this comment. This is existing law and the law is clearly stated.

Page 9 # 3 – This comment addresses section 10.5. OMHST declines to adopt this comment. This section refers to new employee training.

Page 9 # 4 - This comment addresses section 13.3. Based on previous comments, all references to ground control plans have been deleted.

Page 9 # 5 – This comment addresses section 13.3(c). Based on previous comments, all references to ground control plans have been deleted.

Page 9 # 6 – This comment addresses section 13.4. OMHST declines to adopt this comment. This is existing law and a “slide” is a commonly used surface mine term.

Page 9 # 7 - This comment addresses section 13.7. OMHST declines to adopt this comment. Mobile light plants are not required by this section. See response to Apogee Coal Co.’s comment.

Page 9 # 8 – This comment addresses section 14.5(d) and (e). OMHST declines to adopt this comment. As previously stated, all requirements for a ground control plan were deleted.

Page 9 # 9 – This comment addresses section 15.1(c). This comment is adopted and the Rule now reads:

Chassis, engine, pan and bottom of vehicle body shall be reasonably clean and free of oil and grease. Cargo bins shall be cleaned as often as necessary to prevent the excessive accumulation of ammonium nitrate or emulsion on/atop the bins.

Page 9 # 10 – This comment addresses section 15.1(j). OMHST declines to adopt this comment. Requirement for record provides documentation of examinations and maintenance.

Page 9 # 11 – This comment addresses section 15.3(i). Based on a previous Coal Association comment, this Rule was modified to address this comment.

Page 10 # 12 – This comment addresses section 15.5(c). – Based on a response to a comment made by Apogee Coal Co., the 500 feet requirement has been re-inserted.

Page 10 # 13 – This comment addresses section 15.4(r). All requirements for a ground control plan have been deleted pursuant to previous comments.

Page 10 # 14 – This comment addresses section 15.6(d). OMHST declines to adopt this comment. See response to Apogee Coal Co.'s comment.

Page 10 # 15 – This comment addresses section 17.2(j). OMHST declines to adopt this comment. Runaway roads or a suitable equivalent are necessary for haulage safety. Design criteria are stated in DOT regulations.

Page 10 # 16 – This comment addresses section 17.4(k). - OMHST declines to adopt this comment. Surface miner card requires additional training and improves safety. See response to previous Coal Association comments.

Page 10 # 17 – This comment refers to section 19.1. Based on previous comments, all references to ground control plans have been deleted.

Page 10 # 18 – This comment addresses section 20.11. OMHST declines to adopt this comment. See response to Apogee Coal Co.'s comment.

Page 10 # 19 – This comment refers to section 21.10(c). OMHST declines to adopt this comment. See response to previous Coal Association as well as Alpha engineering comments.

Page 10 # 20 – This comment addresses section 26.1. OMHST declines to adopt this comment. See response to Apogee Coal Co. comment.

Page 10 # 21 - This comment addresses section 26.15(o). OMHST declines to adopt this comment for the reasons set forth in a response to a previous Coal Association comment to this section.

Page 11 # 22 – This comment addresses section 26.16(a) and (b). OMHST declines to adopt this comment. All persons should be familiar with the manufacturers' instructions and safe maintenance and operation of all jacks.

Page 11 # 23 – This comment addresses section 26.20(c). OMHST declines to adopt this comment. Judgment of a safe method will be made by persons performing the work.

Page 11 # 1 - This comment addresses section 3.74. OMHST declines to adopt this comment. The IME is a recognized expert in the safe manufacture, transportation, storage, handling and use of explosive materials.

Page 11 # 2 – This comment addresses section 3.86. OMHST declines to adopt this comment. Extreme slopes can be identified visually, and if questions arise, engineering (surveyors) personnel may be utilized.

Page 11 # 3 – This comment addresses section 9.2. OMHST declines to adopt this comment. See response to Massey Coal Services comments.

Page 11 # 4 – This comment addresses section 9.3. OMHST declines to adopt this comment. This section requires more detail than currently required in the CMSP.

Page 11 # 5 – This comment addresses section 10.1. OMHST declines to adopt this comment. See response to Apogee Coal Co., LLC comments.

Page 11 # 6 – This comment addresses section 10.1(c). OMHST declines to adopt this comment. Record keeping was addressed in a previous Coal Association comment. We do not require safety meetings for individual employees.

Page 11 # 7 – This comment addresses section 10.2(b). OMHST declines to adopt this comment. It is important for the foreman to record the results of his safety examinations on all haul roads in his work area.

Page 11 # 8 – This comment addresses section 10.5. OMHST declines to adopt this comment. See response to Apogee Coal Co., LLC comment.

Page 11 # 9 – This comment addresses section 10.6. OMHST declines to adopt this comment. This is existing language. Pre-shift exam books being used are approved.

Page 11 # 10 – This comment addresses section 13.1. OMHST declines to adopt this comment. Fifteen foot limitation is sometimes impractical.

Page 12 # 11 – This comment addresses section 13.3(c). Based on previous comments, all sections requiring a ground control plan have been deleted.

Page 12 # 12 - This comment also addresses section 13.3(c). Based on previous comments, all sections requiring a ground control plan have been deleted.

Page 12 # 13 - This comment addresses section 13.3(d). Based on previous comments, all sections requiring a ground control plan have been deleted.

Page 12 # 14 – This comment addresses section 13.3(g). OMHST declines to adopt this comment. Safely removed means that no person shall be endangered while removing trees.

Page 12 # 15 – This comment addresses section 13.8. OMHST declines to adopt this comment. See response to Apogee Coal Co., LLC comment and see previous Coal Association comment.

Page 12 # 16 – This comment addresses section 15.1(j). This Rule was modified pursuant to a response to an Apogee Coal Co., LLC comment. That modification addresses this comment.

Page 12 # 17 – This comment addresses section 15.3(b). OMHST declines to adopt this comment. Refer to the response to comment 3.74 in Coal Association comments.

Page 12 # 18 – This comment addresses section 15.3(e). OMHST declines to adopt this comment. Time to lower drill mast would be minimal. Drill mast could serve as lightning rods and could attract lightning to the loaded shot.

Page 12 # 19 – This comment addresses section 15.4(q). OMHST declines to adopt this comment. This requirement of inspecting is necessary as miners shall be working on foot near the highwall.

Page 12 # 20 – This comment addresses section 15.4(r). Based on a response to a comment made by Apogee Coal Co., LLC, this Rule was modified to address this concern.

Page 12 # 21 – This comment addresses section 15.5(c) – Based on the responses to a comments made by Apogee Coal Co., LLC and Nelson Brothers, this Rule was modified to address this concern.

Page 12 # 22 – This comment addresses section 15.5(i) – OMHST declines to adopt this comment. Remote control detonation is provided by several manufacturers. Not all are covered in the blasters training for certification. As to the comment addressing 15.5(j), OMHST has addressed this concern in a modification made in response to a Nelson Brothers comment.

Page 12 # 23 – This comment addresses section 15.6(b). OMHST declines to adopt this comment. This section includes additional details not covered by OEB or DEP. Radio silence is necessary for communication between personnel involved in the blasting procedure.

Page 13 # 24 – This comment addresses section 17.2(d). OMHST declines to adopt this comment. Rule was amended in response to a Massey Coal Service comment. Berms would not create a problem for drainage or DEP regulations if installed properly.

Page 13 # 25 – This comment addresses section 17.3(e). OMHST declines to adopt this comment. All manufacturers provide supplemental braking systems for present-day haulage equipment.

Page 13 # 26 – This comment addresses section 17.4(k). A modification to the Rule was made in response to a previous comment that addresses this concern.

Page 13 # 27 – This comment addresses section 17.6(a). OMHST declines to adopt this comment. Mine management will designate parking areas.

Page 13 # 28 – This comment addresses section 17.6(c). OMHST declines to adopt this comment. This section deals specifically with mantrips.

Page 13 # 29 – This comment addresses section 19.1(m). OMHST declines to adopt this comment. Safe distance is recognized as the area where miners could not be injured from material falling from the highwall.

Page 13 # 30 – This comment addresses section 19.6(l). OMHST declines to adopt this comment. OMHST does not understand what section of law this comment references.

Page 13 # 31 – This comment addresses section 19.6(d). OMHST declines to adopt this comment. Persons should be under protection of miner canopy or safe location using extension probes if necessary. Oxygen deficient air could be present in highwall miner openings that have been mined for an extended period of time.

Page 13 # 32 – This comment addresses section 20.2. Based on a response to the UMW comments, this language was deleted.

Page 13 # 33 – This comment addresses section 20.9. OMHST declines to adopt this comment. Section is clearly stated and should be easy to understand.

Page 13 # 34 – This comment addresses section 20.10. OMHST declines to adopt this comment. Drinking water is a health concern.

Page 13 # 35 – This comment addresses section 20.11. This concern was addressed in a response to a comment made by Apogee Coal Co., LLC.

Page 13 # 36 – This comment addresses section 21.6(a). This concern was addressed in a modification to the Rule in response to another comment of the Coal Association.

Page 13 # 37 – This comment addresses section 21.6(g). A modification was made to address this concern in a previous Coal Association comment.

Page 13 # 38 – This comment addresses section 21.7(h). OMHST declines to adopt this comment. See response to a previous Coal Association comment.

Page 13 # 39 – This comment addresses section 21.10(c). OMHST declines to adopt this comment. See response to a previous Coal Association comment.

Page 13 # 40 – This comment addresses section 21.11(h). OMHST declines to adopt this comment. See response to a previous Coal Association comment on this section.

Page 13 # 41 – This comment addresses section 26.1(a). See response to Apogee Coal Co., LLC comment on this section.

Page 14 # 42 – This comment addresses section 26.1(d). OMHST declines to adopt this comment. This section deals with mobile equipment, not tools.

Page 14 # 43 – This comment addresses section 26.2(b). OMHST declines to adopt this comment. “Normal work cycle” is a common surface mining term referring to the normal actions of working equipment.

Page 14 # 44 – This comment addresses section 26.4(d). OMHST declines to adopt this comment. “Mobile equipment” is a common surface mining term referring to equipment that is mobile via wheels, tracks, or skids.

Page 14 # 45 – This comment addresses section 26.10(e). Based on a response to a comment made by Apogee Coal Co., “... ventilated by mechanical means” has been deleted and the section rewritten.

Page 14 # 46 – This comment addresses section 26.15(o). OMHST declines to adopt this comment. This section refers to safe operating and maintenance requirements made by the manufacturers.

Page 14 # 47 – This comment addresses section 26.16(a). OMHST declines to adopt this comment. Manufacturer’s specifications sometimes include other safety precautions other than the rated capacity of the jack.

Page 14 # 48 – This comment addresses section 26.17(a). OMHST declines to adopt this comment. See modifications made to this section in response to Massey Coal Services comment.

Page 14 # 49 – This comment addresses section 26.21. OMHST declines to adopt this comment. An extreme slope is defined as steeper than 2:1. Workable angles may be determined by persons other than engineers. ROPS are essential safety equipment for machines used on extreme slopes.

Page 14 # 50 – This comment addresses section 27.4(e). OMHST declines to adopt this comment. Foremen are not required to examine all structures as part of their pre-shift examination.

Page 14 # 51 – This comment addresses section 27.13(a). OMHST has added a definition for the term “adequate” in the definition section of this Rule.

Page 14 # 52 – This comment addresses section 27.13(e). OMHST declines to adopt this comment. This section does not require SCSR's at the entrance of drawoff tunnel. This section requires SCSR's at the entrance of the escapeway.

Page 14 # 53 – This comment addresses section 29.1(a). OMHST declines to adopt this comment. The 5-lb. fire extinguisher is portable and can be used to extinguish fires in locations not serviced by fire suppression systems.

Page 14 # 54 – This comment addresses section 31.3(b). The intent of the strike-through is to remove the letter "(b)" and then the "Provided . . ." becomes a continuation of paragraph "a".

Page 14 # 55 – This comment addresses section 41.2. - OMHST declines to adopt this comment as it would reduce miner safety.

Page 14 # 56 – This comment addresses section 48.1. Based on previous comments received, section 48 has been deleted.

WV Coal Association Comments (Pamphlet 2 of 3) – The Coal Association's comments were submitted as a list of rule numbers to which a comment was made. The Office of Miners' Health, Safety and Training (OMHST) shall respond to those comments utilizing that same type of format.

§ 56-3-27 10. Mine Foreman and Assistant Mine Foreman; Daily Inspection of Working Places; Records.

10.1(b) - OMHST declines to adopt this comment. This is existing language and is not duplicative of existing preshift requirements. Reviewing previous shift comments in preshift book will only take 3 – 5 minutes.

10.1(c) - OMHST declines to adopt this comment in that the workers in attendance are under the direction of mine management.

10.2(a) - OMHST declines to adopt this comment in that existing regulations require the preshift / on-shift book to be kept at a designated station to record the foreman's findings and must be in ink or indelible pencil. This requirement to return to the designated station and record the foreman's findings are regulations that have been in effect for 25 + years and are well known to all in the industry.

10.5 - OMHST declines to adopt this comment in that it only deals specifically with new miners and not every task in which an individual is to perform.

§ 56-3-~~30~~ 13. Excavating.

13.3(a) - Based on comments from Apogee Coal Company, LLC (Apogee), OMHST will delete requirements for a ground control plan.

13.3(b) - Based on comments from Apogee Coal Company, LLC (Apogee), OMHST will delete requirements for a ground control plan.

WV Coal Association Comments (Pamphlet 3 of 3) – The Coal Association’s comments are numbered. OMHST will respond to the comments by first using the number given to the comment by the Coal Association and then will refer to the specific section of the Rule in the response.

1. This comment addresses section 3.1. OMHST declines to adopt this comment. This definition is primarily existing language which includes preparation plants, processing plants, storage areas and haulageways, roads, shops and trails in the definition of surface mine.
2. This comment addresses section 3.9. OMHST modified this section in response to a comment received from Apogee Coal Co., LLC.
3. This comment addresses section 10.1(a). OMHST modified this section in response to a comment received from Apogee Coal Co., LLC. Thus, the Coal Association’s comment has been previously addressed and the Rule modified according.
4. This comment addresses section 10.1(b). OMHST declines to adopt this comment. The requirement to countersign books is required to verify that the on-coming foreman noted conditions in the book.
5. This comment addresses section 10.1(c). This comment is similar to one made by Apogee Coal Co., LLC. OMHST declines to adopt the comment from Apogee (see Apogee Responses) and also declines to adopt this comment from the Coal Association.
6. This comment addresses section 10.2(a). OMHST modified this section in response to a comment received from Apogee Coal Co., LLC.
7. This comment addresses section 10.5. OMHST modified this section in response to a comment received from Apogee Coal Co., LLC.
8. This comment addresses section 13.3(a) (b) and (c). Based on the responses to Apogee Coal Co. comments, OMHST has already deleted paragraphs (a) though (d).
9. This comment addresses section 13.7. OMHST modified this section in response to a comment received from Apogee Coal Co., LLC.
10. This comment addresses section 14.5(d). OMHST modified this section in response to a comment received from Apogee Coal Co., LLC. “Toe at the base of the shot can be broken without positioning drill near the edge of the highwall (angle drilling).”
11. This comment addresses section 15.1(j). Based on the response to Nelson Brothers LLC and the responses to the Apogee Coal Co. comments, this comment has already been adopted.

12. This comment addresses section 15.3(i). Based on a response to a previous Coal Association comment, this comment has already been modified.
13. This comment addresses section 15.3(b). OMHST declines to adopt this comment for the same reasons as stated in the response to Apogee Coal Co., LLC comment in this section.
14. This comment addresses section 15.3(e). Based on the responses to Apogee Coal Co. and the responses to the UMWA's comments, this comment has already been adopted.
15. This comment addresses section 15.4(c). OMHST modified this section in response to a comment received from Apogee Coal Co., LLC.
16. This comment addresses section 15.4(q). Based on the response to Apogee Coal Co.'s comment, OMHST has previously modified the Rule to address the concern raised by the Coal Association.
17. This comment addresses section 15.4(r). Based on the response to Apogee Coal Co.'s comment, OMHST has previously modified the Rule to address the concern raised by the Coal Association.
18. This comment addresses section 15.6(d). OMHST declines to adopt this comment. "Immediately" is language from existing law and should be easily understandable.
19. This comment addresses section 17.6(a). OMHST modified this Rule based on a previous comment received from Apogee Coal Co., LLC.
20. This comment addresses section 20.11. OMHST modified this Rule based on a previous comment received from Apogee Coal Co., LLC.
21. This comment addresses section 21.6(g). Based on the response to Apogee Coal Co.'s comment, OMHST has already modified the Rule.
22. This comment addresses section 26.1(a). Based on the response to Apogee Coal Co.'s comment, OMHST has previously modified the Rule to address the concern raised by the Coal Association.
23. This comment addresses section 26.1(c). Based on the response to Apogee Coal Co.'s comment, OMHST has already modified the Rule.
24. This comment addresses section 26.2(a). Based on the response to Apogee Coal Co.'s comment, OMHST has previously modified the Rule to address the concern raised by the Coal Association.

25. This comment addresses section 26.7(k). OMHST modified this Rule based on a previous comment received from Apogee Coal Co., LLC.
26. This comment addresses section 26.7(l). Based on a modification made to this section in response to a comment received from Apogee Coal Co. this concern has been addressed.
27. This comment addresses section 26.8(d). OMHST declines to adopt this comment. See response to Apogee Coal Co.'s comment on this section.
28. This comment addresses section 26.10(e). Based on the response to Apogee Coal Co.'s comment, OMHST has previously modified the Rule to address the concern raised by the Coal Association.
29. This comment addresses section 26.15(o). Based on a modification made to this section in response to a comment received from Apogee Coal Co., this concern has been addressed.
30. This comment addresses section 26.21(b). OMHST declines to adopt this comment. See response to Apogee Coal Co.'s comment on this section.
31. This comment addresses section 26.21(b)(3). Based on a modification made to this section in response to a comment received from Apogee Coal Co. this concern has been addressed.
32. This comment addresses section 26.21(f). Based on a modification made to this section in response to a comment received from Apogee Coal Co., this concern has been addressed.
33. This comment addresses section 26.21(g). Based on the response to Apogee Coal Co.'s comment, OMHST has previously modified the Rule to address the concern raised by the Coal Association.
34. This comment addresses section 26.21(l). NOTE: This was incorrectly listed as 26.21(m). OMHST modified this Rule based on a previous comment received from Apogee Coal Co., LLC.
35. This comment addresses section 27.13(a). OMHST declines to adopt this comment. See response to Apogee Coal Co.'s comment on this section.
36. This comment addresses section 27.13(c). OMHST declines to adopt this comment. Regulations do not stipulate phone communication.
37. This comment addresses section 27.13(e). OMHST declines to adopt this comment. Escapeway could be blocked or fire or smoke present. Many scenarios could be stated to justify donning SCSR.

United Mine Workers of America Comments – The United Mine Workers of America’s comments were submitted as a list of rule numbers to which a comment was made. The Office of Miners’ Health, Safety and Training (OMHST) shall respond to those comments utilizing that same type of format.

8.1 - OHMST declines to adopt this comment. This is the same requirement as found in the Code (W. Va. Code § 22A-2-7(d)) pertaining to underground mine foremen.

3.63 - OHMST declines to adopt this comment. As written, the definition clearly states that an electrical storm is synonymous with a thunderstorm and a lightning storm.

3.87 - OHMST declines to adopt this comment. Under the Code (W. Va. Code § 22A-1-37(a)), mines employing five (5) or less people are not required to have a mine foreman. In the interest of safety, OMHST believes that someone must perform these examinations and has created a “competent person” definition in order to accomplish this goal.

9.1 - OHMST declines to adopt this comment. Under the Code (W. Va. Code § 22A-1-37(a)), mines employing five (5) or less people are not required to have a mine foreman. In the interest of safety, OMHST believes that someone must perform these examinations and has created a “competent person” definition in order to accomplish this goal.

10.6(a) - OMHST adopts this comment. OMHST will reinsert the previously deleted sentence. This Rule shall read as follows

All violations or hazardous condition and the action taken to correct such violations or conditions including the pre-shift examinations shall be recorded with ink or indelible pencil in a book prescribed by the Director of the Department of Energy Office of Miners’ Health, Safety and Training, and kept for such purpose at a place at the surface mine designated by mine management at the mine office for a period of one year. All records of daily, and weekly reports as prescribed herein, shall be open for inspection by interested persons, and the record book shall be kept for a period of one (1) year.

10.9 - OMHST declines to adopt this comment. As with the comment to 9.1 above, OMHST has created a “competent person” definition in the interest of safety.

11.1 - OMHST declines to adopt this comment. As with the comment to 9.1 above, OMHST has created a “competent person” definition in the interest of safety.

13.3 - OMHST declines to accept this comment. Based upon comments by Apogee Coal Company, LLC (Apogee), Massey Coal Services (Massey), Coal Association, and Alpha Engineering Services, Inc (Alpha), 13.3(a) through 13.3(d) have been deleted and renumbered 13.3(e) through 13.3(j). Thus, the UMW’s comment has been addressed.

14.6(e) - This comment is a request for clarification rather than a comment. However, examination and certification of persons engaged in or directly responsible for blasting or use of explosives falls under the purview of the Office of Explosives and Blasting, which is maintained under the Department of Environmental Protection (W. Va. Code § 22-1-1 et seq.).

15.3(b) - This comment is adopted by OMHST. OMHST will add “and an authorized representative of the miners.” This Rule shall read as follows:

~~Previously frozen explosives of nitroglycerin base shall not be used.~~ The transportation, storage, handling, and use of explosive materials and blasting accessories shall be in accordance with the current Institute of Makers of Explosives Warnings and Instructions. A copy of the current Institute of Makers of Explosives Warnings and Instructions shall be posted at the mine. All persons involved in the blasting procedure shall be properly trained and familiar with these Warnings and Instructions and a record kept of this training for one (1) year and made available to a representative of the Director, and an authorized representative of the miners, upon request.

15.1(j) - This comment is adopted by OMHST. OMHST will add “and an authorized representative of the miners.” There were other modifications made to this Rule pursuant to comments received from Apogee, Nelson, and Massey. The Rule shall read as follows:

Maintenance and examinations shall be performed on the emulsion pump in accordance with the manufacturer’s specifications. A record of the examinations shall be kept with the vehicle for one year and made available to a representative of the Director, and an authorized representative of the miners, upon request.

15.3(e) - This comment is adopted by OMHST. Based upon responses to Apogee and the Coal Association, OMHST will modify the Rule to read:

The use of explosives and handling incident thereto, will shall be discontinued during the approach of and during whenever lightning is seen or thunder is heard, or a thunderstorm and/or electrical storm is detected and all personnel shall be withdrawn from the blast area. When drills are being operated on a bench with loaded holes, or holes being loaded, masts shall be lowered upon the approach of a thunderstorm and/or electrical storm.

15.4(c) - OMHST declines to accept this comment. The fifty (50) foot requirement has historically been the norm and has not created a safety issue to date. There were other modifications made to this Rule pursuant to comments made by Nelson and Apogee. OMHST modified the Rule to read as follows:

Only drills, explosives trucks, mobile equipment suitable for hole stemming, and equipment necessary No equipment except the drill and explosive truck, other than necessary equipment for road repairs to remove the drills or explosive trucks, shall be permitted to work within fifty (50) feet of the entire column of loaded holes or holes being loaded. Mobile equipment such as small front end loaders and other suitable hole stemming equipment shall be allowed to assist hole stemming procedures where adequate hole diameters are drilled and an adequate distance is provided between holes and rows of holes to ensure the safe operation and movement of equipment. The use and operation of all equipment used to stem holes shall be under the direct supervision of a certified blaster. Equipment powered by external electrical sources and power cables shall be prohibited from being within one hundred (100) feet of loaded holes or holes being loaded; where such equipment is being used and electrical detonators are being used, stray current test shall be made on the bench prior to commencing the loading of holes, if current is detected, such power shall be deenergized. When the equipment indicated above has malfunctioned and cannot be removed from the area, the blaster and certified foreman shall direct the use of maintenance equipment if required to safely repair and/or remove the disabled equipment from the area. Adequate precautions shall be taken to prevent extraneous electricity from entering an electrical blasting circuit. Electrically-powered equipment and trailing cables shall be prohibited from being within one hundred (100) feet of loaded holes or holes being loaded. When a potential source of extraneous electricity is present within three hundred (300) feet and electrical detonators are to be used, a stray current test shall be made on the bench prior to commencing loading holes; if current is detected, the source of the extraneous electricity shall be neutralized before loading may begin.

15.4(q) - OMHST declines to adopt this comment. As with the comment to 9.1 above, OMHST has created a “competent person” definition in the interest of safety.

15.6(h) - This comment is adopted by OMHST. OMHST will add “and made available to an authorized representative of the miners.” This Rule shall read as follows:

When drilling and blasting in areas where underlying coal seam(s) are burning, or suspected of burning, a plan outlining safeguards to be provided for the protection of

workers shall be submitted for approval to the West Virginia Office of Miners' Health, Safety and Training, and made available to an authorized representative of the miners. Such drilling and blasting shall not commence until approval is granted.

15.8(b) - OMHST declines to adopt this comment. As with the comment to 9.1 above, OMHST has created a "competent person" definition in the interest of safety.

17.4(k) - This comment is a request for clarification rather than a comment. However, OMHST modified this Rule in response to comments received from Massey and the Coal Association. Thus, the UMW's comment has been previously addressed and the Rule modified accordingly.

19.4(a) - This comment is adopted by OMHST. OMHST will modify the Rule by adding "a copy of that plan shall be made available to an authorized representative of the miners." This Rule shall read as follows:

(a) No person(s) shall enter a highwall miner opening for any reason without written approval from the Office of Miners' Health, Safety & Training. No person(s) shall enter a highwall miner opening for any reason unless that person(s) possesses a valid West Virginia underground coal miner certificate. The operator must submit a plan for approval, and a copy made available to a representative of the miners, that includes the following provisions:

19.4(l) - This comment is adopted by OMHST. OMHST will add "and an authorized representative of the miners." This Rule shall read as follows:

(l) Mine operators shall require all people handling energized portable trailing cables to wear approved and tested insulated workmen's gloves. All such protective equipment shall be furnished by the operator. Rated gloves used when handling energized portable trailing cables shall be electrically tested every thirty (30) days and a record of that test shall be kept for one (1) year and made available to a representative of the Director, and an authorized representative of the miners, upon request.

20.2 - This comment is adopted by OMHST. This comment is similar to comments received from Alpha and the Coal Association. The Rule is modified to remove the "search" requirement. The Rule shall read as follows"

Alcohol and drugs – Persons under the influence of alcohol or drugs shall not be permitted on a surface mine or attendant facility.

RESPONSE TO THE PUBLIC HEARING HELD ON JULY 2, 2009

On July 2, 2009, a public hearing was held to receive comments on this Rule. No one signed up to speak at that hearing. See Transcript of that hearing and the exhibit attached to the transcript.

APOGEE COAL COMPANY, LLC

HC 61, BOX 156
Yolyn, WV 25654

PHONE (304) 792-8248
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July 15, 2009

Mr. Ron Wooten, Director
WV Office of Miner's Health, Safety & Training
1615 Washington Street, East
Charleston, WV 25311

RE: Comments on proposed changes to Title 56, Series 3
Guyan Surface Mine
Permit # S-5007-01A MSHA I.D. # 46-08939

Dear Mr. Wooten:

Attached are the comments/responses from Apogee Coal LLC – Guyan Surface Mine.

We respectfully ask that you give serious consideration to our recommendations and allow adequate time to evaluate our responses.

We have numerous concerns that are listed within the proposed regulations.

Our comments/responses are in ***Bold, Italics and Shaded.***

Sincerely,



Dennis K Wellman
Manager of Safety and Training
Apogee Coal Company

APOGEE COAL COMPANY, LLC

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Manager of Safety and Training
Apogee Coal Company

**TITLE 56
LEGISLATIVE RULES
OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING**

**SERIES 3
RULES AND REGULATIONS GOVERNING THE SAFETY OF
THOSE EMPLOYED IN AND AROUND SURFACE MINES IN WEST VIRGINIA**

§56-3-1. General.

1.1. Scope. -- These rules govern safety of employees in and around mines.

1.2. Authority. -- W. Va. Code § ~~22-6-4~~ 22A-1-6 and 22A-1-38

1.3. Filing Date. -- June 2, 2009

1.4. Effective Date. -- _____

1.5. Applicability. -- These regulations shall extend to all surface mining operations. These regulations shall not apply to any utility or railroad having facilities in the vicinity of surface mining operations unless such utility or railroad is also the operators of such surface mining operations.

1.6. Other law applicable. -- All provisions of the mining law of this state, specifically Chapter 22A, Articles 2 1 and 2 of the West Virginia Code, are applicable to surface mining, except to the extent that these regulations cover the specific requirement, and except to the extent that the context of a specific provision would render its applicability totally inappropriate to surface mining.

§56-3-2. Effect of Law and Regulations.

2.1. These regulations shall have the effect of law and violations shall be deemed a violation of law and so cited with the same effect as law. All provisions of Article 1, Chapter 22A of the West Virginia Code ~~relative to enforcement~~ are applicable to ~~the enforcement~~ of these regulations.

§56-3-3. Definitions.

3.1. "Surface Mine" shall mean all areas surface mined or being surface mined as well as adjacent areas ancillary to the operations, together with preparation and processing plants; storage areas and haulageways, roads, shops and trails; ~~which are covered by the provisions of Chapter 20, Article 6 of the Code and coal prospecting subject to Section 8, Article 6, Chapter 20 of the Code.~~ "Surface Mine" for the purpose of these regulations shall not mean the surface operations connected with an underground coal mine.

Comment/Response: "Surface Miner" Will this include preparation plant employees & supervisors?

3.2. Department: The term "Department" shall mean the state ~~department of energy~~ Office of Miners' Health, Safety and Training provided for in Section 2 1, Article 1 of Chapter 22A of the West Virginia Code.

3.3. Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training: The term "Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training" shall mean the Director of the ~~department of energy~~ office of miners' health, safety and training provided for in Chapter 22A, Article 1, Section 3, of the West Virginia Code, ~~and is synonymous with the term "Chief of the Department of Energy".~~

3.4. The term "Inspector" shall mean surface mine inspector employed by the ~~Department of Energy~~ Office of Miners' Health, Safety and Training.

3.5. Mine Inspectors' Examining Board: The term "Mine Inspectors' Examining Board" shall mean the mine inspectors' examining board provided for in ~~Section 12~~ Article 9 of Chapter 22A of the West Virginia Code.

3.6. Board of Appeals. -- The term "Board of Appeals" shall mean the Board of Appeals as provided for in ~~Section 31~~ Article 5 of Chapter 22A of the West Virginia Code.

3.7. Agent. -- the term "Agent" means any person charged with the responsibility for the operations of all or a part of a surface mine or the supervision of the miners on a surface mine.

3.8. Operator. -- The term "Operator" shall mean any firm, corporation, partnership or individual operating any surface coal mine or part thereof, or engaged in the construction of any facility associated with a coal mine.

3.9. Surface Miner. -- the term "Surface Miner" shall mean any individual working on or around a surface mine. ~~who is employed by the operator.~~

Comment/Response: "Surface Miner" Will this include preparation plant employees & supervisors?

3.10. Person. -- The term "Person" shall mean any individual, partnership, association, corporation, firm, subsidiary of a corporation or other organization.

3.11. Superintendent. -- The term "Superintendent" shall mean the person who shall have, on behalf of the operator, immediate supervision of one (1) or more mines.

3.12. Mine Foreman. -- The term "Mine Foreman" shall mean the certified person whom the operator or superintendent shall place in charge of the workings of the surface mine and of the persons employed thereon.

3.13. Assistant Mine Foreman. -- The term "Assistant Mine Foreman" shall mean a certified person designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of the persons employed therein.

3.14. Supervisor. -- The term "Supervisor" shall mean a superintendent, mine foreman, assistant mine foreman, or any person specifically designated by the superintendent or mine foreman to supervise work of employees and who is acting pursuant to such specific designation and instructions.

3.15. Interested Persons. -- The term "Interested Persons" shall include the operator, members of any mine safety committee at the mine affected and other duly authorized representative of the mine workers and Department of Energy the Office of Miners' Health, Safety and Training.

3.16. Certified Electrician. -- The term "Certified Electrician" shall mean any person who is qualified as a mine electrician and who has passed an examination given by the ~~Department of Energy~~ Office of Miners' Health, Safety and Training, or has at least three (3) years of experience in performing electrical work underground in a coal mine, in the surface work area of an underground coal mine, in a surface coal mine, in a noncoal mine, in the mine equipment manufacturing industry, or in any other industry using or manufacturing similar equipment, and has satisfactorily completed a coal mine electrical training program approved by the ~~Department of Energy~~ Office of Miners' health, Safety and Training.

3.17. Certified Person. -- The term "Certified Person" when used to designate the kind of person to whom the performance of a duty in connection with the operation of a mine shall be assigned, shall mean a person who is qualified under the provisions of this law to perform such duty.

3.18. Accident. -- The term "Accident" shall mean any premature ignition, fire or injury, or death other than natural causes of any person.

3.19. Imminent Danger. -- The term "Imminent Danger" means the existence of any condition or practice on a surface mine which could be expected to cause death or serious physical harm before such condition or practice can be abated.

3.20. Qualified Person. -- The term "Qualified Person" shall mean a person who has completed an examination and is considered qualified on record by the ~~Department of Energy~~ Office of Miners' Health, Safety and Training.

3.21. Approved. -- The term "Approved" shall mean in strict compliance with mining law, or, in the absence of law, accepted by a recognized body or organization whose approval is generally recognized as authoritative on the subject.

3.22. Berm. -- Means a pile or mound of material or equivalent capable of restraining a vehicle.

3.23. Work of Preparing the Coal. -- The term "Work of Preparing Coal" shall mean the breaking, crushing, sizing, cleaning, washing, drying, mixing, storing, loading, and removing of over-burden from the top of the coal for the purpose of extracting coal.

3.24. Active Underground Mine Working. -- The term "Active Underground Mine Working" shall mean all places in a mine that are ventilated and inspected regularly.

3.25. Abandoned Underground Mine Workings. -- The term "Abandoned Underground Mine Workings" shall mean excavation, either caved or sealed, that is deserted and in which further mining is not intended, or open workings which are ventilated and not inspected regularly.

3.26. Working Place. -- The term "Working Place" shall mean all areas in or about a surface mine where persons are working.

3.27. Detonator. -- The term "Detonator" shall mean **electronic** (electric) blasting caps, electrical blasting caps, and nonelectric delay blasting caps.

3.28. Nonelectric delay blasting caps. -- The term "Nonelectric Delay Blasting Caps" shall mean a blasting cap with an intergral delay element in conjunction with and capable of being detonated by a detonation impulse or signal from a **shock tube** miniaturized detonating cord and does not require the use of electric energy to function.

3.28. Nonelectric delay blasting caps. -- The term "Nonelectric Delay Blasting Caps" shall mean a blasting cap with an intergral delay element in conjunction with and capable of being detonated by a detonation impulse or signal from a miniaturized detonating cord and does not require the use of electric energy to function.

3.29. Primer. -- The term "Primer" shall mean a cartridge or container of explosives into which a detonator or detonating cord is inserted or attached, and whose purpose is to initiate the main explosive charge.

3.30. Detonating cord. -- The term "Detonating Cord" shall mean a flexible cord containing a center core of high explosives to detonate other explosives with which it comes in contact.

3.31. Cast primer or booster. -- The term "Cast Primer or Booster" shall mean a case or pressed block or solid high explosives (i.e., not nitroglycerin sensitized) which is normally used to detonate insensitive or noncapsensistive explosives.

3.32. Safety fuse. -- The term "Safety Fuse" shall mean a flexible cord containing an internal burning medium by which fire or flame is conveyed at a continuous and uniform rate from the point of ignition to the point of use, usually a blasting cap.

3.33. Detonating cord millisecond delay connectors. -- The term "Detonating Cord Millisecond Delay Connectors" shall mean nonelectric shot interval (millisecond) delay devices for use in delaying blasts which are surface initiated by detonating cord.

3.34. Blasting agent. -- ~~Means any material consisting of a mixture of a fuel and oxidizer which:~~
An explosive material which meets prescribed criteria for insensitivity to initiation.

~~(a) is used or intended for use in blasting; For storage, Title 27, Code of Federal Regulations, Section 55.11 defines a blasting agent as any material or mixture, consisting of fuel and oxidizer intended for blasting, not otherwise defined as an explosive: provided, that the finished product, as mixed for use or shipment, cannot be detonated by means of a No. 8 test blasting cap (detonator) when unconfined (ATF Regulation).~~

~~(b) is not classified as an explosive by the Department of Transportation; For transportation, Title 49 CFR, Section 173.50, defines Class 1, Division 1.5 (blasting agent) as a substance which has mass explosion hazard but is so insensitive that there is very little probability of initiation or of transition from burning to detonation under normal conditions in transport.~~

~~(c) passes all United States DOT tests defining blasting agent, including insensitivity to a No. 8 blasting cap in accordance with CFR49, 173.114a.~~

3.35. Blasting area. -- Shall mean the area near blasting operations in which concussion or flying material can reasonably be expected to cause injury. The Blasting area is to be determined by the Blaster in Charge.

3.36. Explosives. -- The term "Explosives" shall mean any or all of the following, but is not limited to: water gel slurries, dynamites, permissibles, pellet powder, blasting caps, electric blasting caps, nonelectrical delay blasting caps, electronic computer chip blasting caps, cast primer and boosters, detonating cord, and detonating cord delay connections.

3.37. Electric blasting caps. -- The term "Electric Blasting Caps" shall mean instantaneous electric blasting caps and all types of delay electric blasting caps.

3.38. Armored cable. -- The term "Armored Cable" shall mean a cable provided with a wrapping of metal, usually steel wires or tapes, primarily for the purpose of mechanical protection.

3.39. Branch circuit. -- The term "Branch Circuit" shall mean any circuit, alternating current or direct current, connected to and leading from the main power lines.

3.40. Cable. -- The term "Cable" shall mean a standard conductor (single conductor cable) or a combination of conductors insulated from one another (multiple conductor cable).

3.41. Circuit breaker. -- The term "Circuit Breaker" shall mean a device for interrupting a circuit between separable contacts under normal or abnormal conditions.

3.42. Delta connected. -- The term "Delta Connected" shall mean a power system in which the windings or transformers or S.C. generators are connected to form a triangular phase relationship, and with phase conductors connected to each point of the triangle.

3.43. Effectively grounded. -- The term "Effectively Grounded" is an expression which means grounded through a grounding connection of sufficiently low impedance (inherent or intentionally added or both) so that fault grounds which may occur cannot build up voltages in excess of limits established for apparatus, circuits or systems so grounded.

3.44. Flame-resistant Cable, Portable. -- The term "Flame-resistant Cable, Portable" shall mean a portable flame-resistant cable that has passed the flame test of the Federal ~~Bureau of Mines~~. Mine Safety and Health Administration.

3.45. Ground or grounding conductor (mining). -- The term "ground or Grounding Conductor (mining)", also referred to as a safety ground conductor, safety ground, and frame ground, shall mean a metallic conductor used to connect the metal frame, or enclosure or any equipment, device or wiring system with a mine track or other effective grounding medium.

3.46. Grounded (earthed). -- The term "grounded (earthed)" shall mean that the system, circuit, or apparatus referred to is provided with a ground.

3.47. High voltage. -- The term "High Voltage" shall mean voltages of more than one thousand (1,000) volts.

3.48. Lightning Arrestor. -- The term "lightning arrestor" shall mean a protective device for limiting surge voltage on equipment by discharging or by passing surge current, it prevents continued flow or follow current to ground and is capable of repeating these functions as specified.

3.49. Low voltage. -- The term "low voltage" shall mean up to and including six hundred sixty (660) volts.

3.50. Medium voltage. -- The term "medium voltage" shall mean voltages from six hundred sixty-one (661) to one thousand (1,000) volts.

3.51. Mine Power Center or Distribution Center. -- The term "mine power center or distribution center" shall mean a combined transformer or distribution unit, complete within a metal enclosure from which one (1) or more low-voltage power circuits are taken.

3.52. Neutral (derived). -- The term "neutral (derived)" shall mean a neutral point or connection established by the addition of a "zigzag" or grounding transformer to a normally underground power system.

3.53. Neutral Point. -- The term "neutral point" shall mean the connection point of transformer or generator windings from which the voltage to ground is nominally zero (0), and is the point generally used for system groundings in wye-connected A.C. power system.

3.54. Portable (Trailing) Cable. -- The term "portable (trailing) cable" shall mean a flexible cable or cord used for connecting mobile, portable or stationary equipment ~~in mines to a trolley system or other external~~ to a source of electrical energy where permanent ~~mine~~ wiring is prohibited or is impracticable.

3.55. Wye-Connected. -- The term "wye-connected" shall mean a power system connection in which one (1) end of each phase windings or transformers or A.C. generators are connected together to form a neutral point, and a neutral conductor may or may not be connected to the neutral point, and the neutral point may or may not be grounded.

3.56. ZigZag Transformer (Grounding Transformer). -- The term "zigzag transformer (grounding transformer)" shall mean a transformer intended primarily to provide a neutral point for grounding purposes.

3.57. Brake systems:

(a) Service brake system - the primary brake system used for stopping a vehicle.

(b) Emergency stopping system - the system used for stopping a vehicle in the event of any single failure in the service brake system.

(c) Parking system - a system to hold a stopped vehicle in a stationary position.

3.58. "Barricaded" means to obstruct passage of person, vehicles, or flying materials.

3.59. Blast controller. -- The term "blast controller" shall mean a firing device for electronic detonator circuits which may have functions (such as programming, communication, circuit diagnostics, etc.) in addition to charging and transmission of the firing command.

3.60. Blast site. -- The term "blast site" shall mean the area where explosive material is handled during loading of blast holes, including fifty (50) feet in all directions from the perimeter formed by loaded holes.

Comment/Response: Does the "blast site" definition include the entire column of explosives?

3.61. Blasting accessories. -- The term "blasting accessories" shall mean non-explosive devices and materials used in blasting, such as, but not limited to, cap crimpers, tamping bags, blasting machines, blasting galvanometers, and cartridge punches.

3.62. Case insert. -- The term "case insert" shall mean a set of printed, precautionary instructions, including the IME "Instructions and Warnings" which is included in a case of explosive materials.

3.63. Electrical Storm. -- The term "electrical storm" shall mean an atmospheric disturbance characterized by intense electrical activity producing lightening strikes and strong electric and magnetic fields. Synonymous with a thunderstorm and a lightening storm.

3.64. Electronic detonator. – The term “electronic detonator” shall mean a detonator that utilizes stored electrical energy as a means of powering an electronic timing delay element/module and that provides initiation energy for firing the base charge.

3.65. Extraneous electricity. – The term “extraneous electricity” shall mean electrical energy, other than actual firing current or the test current from a blasting galvanometer, that is present at a blast site and that could enter an electric blasting circuit. It includes stray current, static electricity, RF (electromagnetic) waves and time varying electric and magnetic fields.

3.66. Firing/blasting device. – The term “firing device” or “blasting device” shall mean a device capable of charging and transmitting a fire command to an electronic detonator circuit. Also, a device capable of detonating an electric or nonelectric detonator.

3.67. Misfire - A blast or specific borehole that failed to detonate as planned. Also, the explosive materials that failed to detonate as planned.

3.68. Barrier – Material objects that separates, keeps apart or demarcates in a conspicuous manner such as cones, stakes and warning tape, used in conjunction with warning signs.

Comment/Response: What other material objects will be accepted for use as a barrier?

3.69. Borehole – A hole drilled in the material to be blasted, for the purpose of containing an explosive charge, also called Blasthole or Drillhole.

3.70. Downline – The line extending down the borehole used to carry energy to the detonating cap.

3.71. Emulsion – An explosive material containing substantial amounts of oxidizer dissolved in water droplets, surrounded by an immiscible fuel, or droplets of an immiscible fuel surrounded by water containing substantial amounts of oxidizer.

3.72. Firing/Lead line – The wires connecting electric or electronic blasting circuit(s) to the electrical power source/blast controller. In cases of non electrical initiation systems, the line that connects the blasting circuit(s) to the blasting initiating device.

3.73. Hot Holes – Boreholes drilled in the overburden overlaying a burning coal seam which increases the temperature of the boreholes.

3.74. Institute of Makers of Explosives (IME) – A non-profit safety-oriented trade association representing producers of commercial explosive materials in the United States and Canada and dedicated to safety in the manufacture, transportation, storage, handling and use of explosive materials.

- 3.75. Loaded Hole – A borehole containing explosive material(s).
- 3.76. Loading – Placing explosive material in a borehole or against material to be blasted.
- 3.77. Overburden – Material of any nature laying on top of a deposit of coal which is to be mined.
- 3.78. Radio Frequency Energy – The energy radiated as electromagnetic waves in the radio frequency spectrum.
- 3.79. Radio Frequency Transmitter – An electronic transmitting device which radiates radio frequency waves. The transmitting device may be fixed (stationary) or mobile, and includes car telephones, citizens band radios, AM and FM radio transmitters, television transmitters and radar transmitters.
- 3.80. Shot or Round – A group of loaded boreholes fired, or intended to be fired in a continuous sequence with the application of initiating energy.
- 3.81. Shock Tube – A small diameter plastic tube used for initiating detonators. It contains only a limited amount of reactive material so that the energy that is transmitted through the tube by means of a detonation wave is guided through and confined within the walls of the tube.
- 3.82. Slurry – An explosive material containing substantial portions of a liquid, oxidizers and fuel, plus a thickener.
- 3.83. Static Electricity – Electric charge at rest on a person or object. It is most often produced by the contact and separation of dissimilar insulating materials.
- 3.84. Stray Current – A flow of electricity outside an insulated conductor system.
- 3.85. Wet Holes – Boreholes that contain water.
- 3.86. Extreme slope - An extreme slope is any slope greater than a 2:1 slope.
- 3.87. Competent person - means a person designated by the mine operator or independent contractor who has a minimum of twenty-four (24) months experience at a surface mine and is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.
- 3.88. Approved Detector – means any detector, approved by MSHA, to test for methane gas, oxygen deficiency, or other harmful gases.

§56-3-4. Applicability and Enforcement of Laws Safeguarding Life and Property; Regulations; Authority of Department of Energy Regarding Safety Laws.

4.1. All provisions of the mining laws of this state intended to safeguard life and property shall extend to all surface mining operations insofar as such laws are applicable thereto. The director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training shall promulgate reasonable regulations in accordance with the provisions of Chapter 29A of this code to protect the safety of those employed in and around surface mines. The enforcement of all laws and regulations relating to the safety of those employed in and around surface mines is hereby vested in the ~~Department of Energy~~ Office of Miners' Health, Safety and Training and shall be enforced according to the provisions of Chapter 22A of the West Virginia Code.

§56-3-5. Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training - Appointment; Term of Office.

5.1. There shall be a Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training, who shall be appointed by the Governor with the advice and consent of the Senate ~~and who shall serve for a term of four (4) years~~, subject to the provisions of Chapter 6 22A, Article 6 1, Section 4~~(6-6-4)~~ 3 of the West Virginia Code, as amended.

§56-3-6. Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training - Powers and Duties.

6.1 The director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training shall have full charge of the department. He shall have the powers and ~~duty~~ duties as set forth in Section 4, Article 1, Chapter 22A of the West Virginia Code:

~~§56-3-21~~ 7. Mine Foreman Examiner for Mine Foreman and Assistant Mine Foreman - Salary.

~~21~~ 7.1. The Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training shall appoint a mine foreman examiner to examine and certify mine foreman and assistant mine foreman and mine examiners. Such mine foreman examiners shall be paid a minimum salary of ~~thirteen thousand five hundred dollars (\$13,500)~~ thirty-one thousand thirty-two dollars (\$31,032.00) per year.

~~21~~ 7.2. The duties of the mine foreman examiner shall be to:

- (a) Prepare and conduct examinations of mine foreman, assistant mine foreman,
- (b) Prepare and certify to the director of the department of energy a register of all persons who successfully completed the examination with a passing grade of eighty percent (80%).

~~21~~ 7.3. The Director of the Department of Energy shall determine the location where the mine foreman examiner shall meet for the purpose of holding examinations, and at least two (2) weeks notice of time and place where the examinations are to be held shall be given.

The examinations shall be given at any location where there are at least five (5) men to be tested, and adequate facilities to conduct such examination. The office of the secretary to the mine foreman examiner shall be located in the capitol complex in Charleston. All records pertaining to the examinations shall be kept at such office.

~~24~~ 7.4. The mine foreman examiner shall, with the approval of the director, prepare, and from time to time, modify examinations to be administered to applicants for certification as mine foreman.

All persons who desire to appear for examination shall notify the mine foreman examiner of their intentions to appear, if possible, not less than ten (10) days prior to the date set for the examination. The mine foreman examiner shall inquire into the character and qualifications of the applicants who present themselves for examination.

~~24~~ 7.5. Certificates of qualification of service heretofore granted shall have equal value with certificates of qualifications granted under these regulations.

~~24~~ 7.6. The mine foreman examiner shall certify to the director, on a form furnished by him, every person whose examination shall disclose his fitness for the duties of mine foreman, assistant mine foreman, and as above classified, and the director shall prepare certificates of qualification for the successful applicants and send them to the mine foreman examiner for distribution.

~~24~~ 7.7. The mine foreman examiner shall send to the director the answers and all other papers of the applicants, together with the tally sheets and a list of the questions and answers as prepared by the mine foreman examiner which shall be filed in the department as public documents.

§56-3-8. Out-of-State Mine Foreman.

~~25-2.~~ 8.1 Any person holding a mine foreman's certificate issued by any other state may act in the capacity of mine foreman in any mine in this state until the next regular mine foreman examination held by the department, but not to exceed a maximum of ninety (90) days.

§56-3-26 9. Instruction of Employees and Supervision of Apprentices; Annual Examinations of Persons Using ~~Flame Safety Lamps~~ Approved Detector; Records of Examination; Maintenance of Methane Detectors, Etc.

~~26~~ 9.1. It shall be the duty of the mine foreman or the assistant mine foreman of every coal mine in this state to see that every person employed to work in such mine shall, before beginning work therein, be instructed in the particular danger incident to his work exposure in such mine, and be furnished a copy of the mining laws and rules of such mine. For those mines employing less than five (5) persons in a period of twenty-four (24) hours and who do not have a mine foreman, a competent person, as defined in 56 CSR § 3.3.87, shall perform this duty.

~~26~~ 9.2. No person shall be qualified for testing for methane and for oxygen deficiency unless each such person has been trained and demonstrates to the satisfaction of an authorized representative of the Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and

Training that he is qualified to test for methane with ~~a flame safety lamp or another~~ an approved methane detectors. Records of such examinations shall be kept by the operator and the Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training.

Persons whose duties require them to use a flame safety lamp and other approved detectors, that have been qualified by the ~~Department of Energy~~ Office of Miners' Health, Safety and Training to test for methane and oxygen deficiency, shall be examined at least annually to their competence by a certified mine foreman and a record that such examination was given, together with pertinent data relating thereto, shall be kept on file by the operator and a copy shall be furnished to the ~~department of energy~~ Office of Miners' Health, Safety and Training.

Persons whose duties require them to administer the annual examinations for methane and oxygen deficiency shall be examined annually by a qualified official from the ~~Department of Energy~~ Office of Miners' Health, Safety and Training. Each operator shall provide for the proper maintenance, and before each shift, care shall be taken to insure that such ~~lamp or other device~~ approved detector is in a permissible condition. ~~Flame safety lamps~~ Approved detectors shall be given proper maintenance and inspection before each working shift in a manner recommended by the manufacturing company and approved by the director of the ~~department of energy~~ Office of Miners' Health, Safety and Training. Other approved gas detectors shall be given proper maintenance and shall be tested in accordance with the manufacturer's recommendations before each working shift and calibrated each thirty (30) calendar days.

26 9.3. Job assignments to any miner. -- When a job assignment is given to any miner that he has not performed in the recent past, such inexperienced person, in the particular job assignment shall be instructed in the hazards incident thereto and the law and regulations relevant thereto prior to performing any duties in such new job assignment. When such job assignment includes the operation of equipment, the instruction shall include a supervised dry run. Instructions shall be given by a person(s) competent in the operation of the equipment as well as the hazards associated with surface mining and shall include the proper use, function testing, and maintenance of all safety features of the equipment. When the job assignment related to a plan in effect at the mine, the relevant portions of the plan shall be reviewed. A record shall be kept of such instruction and made available to a representative of the Director upon request.

§56-3-27 10. Mine Foreman and Assistant Mine Foreman; Daily Inspection of Working Places; Records.

27 10.1. Pre shift examination.

(a) Prior to the beginning of any shift the mine foreman or assistant mine foreman shall visit and carefully examine ~~highwalls in the working area and spoil piles for cracks, loose materials, overhanging ledges, and other dangerous conditions~~ all active working places of the surface mine.

Comment/Response: "All active working places"- Will this include pond construction areas, timber cutting or any other ancillary work areas? Should this section include the language - "areas under their supervision"?

(b) Upon completion of the examination, the foreman shall record the results in a book prescribed by the director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training, at the designated station at the surface mine before persons enter the working area of the mine. Before the beginning of any shift upon which they shall perform supervisory duties, the mine foreman or his assistant shall review carefully and countersign all books and records of the prior shift reflecting the conditions and the areas under their supervision, exclusive of equipment logs, which the operator is required to keep.

Comment/Response: Countersign all books and records of the prior shift - The requirement to countersign the books is only an indication that the oncoming foreman noted conditions in the book, not that he can attest that the books includes any hazards in the work area.

(c) The operator shall have weekly safety meetings with all employees which shall provide training in the working practices and conditions at the mine and rules and regulations applicable thereto. A record of the topic of the weekly safety meetings shall be kept and signed by all people in attendance. This record shall be kept for one (1) year and made available to a representative of the Director upon request.

Comment/Response: Signed attendance list - Signatures by all persons present could necessitate changes in the way conduct our meetings. Attendees could include 50 - 100 employees. It could take an enormous amount of time to sign an attendee's sheet. This would distract employees and direct attention away from the safety meeting topics.

27 10.2. On-shift examination.

(a) The mine foreman or assistant mine foreman shall examine all working places ~~in the pit at the surface mine~~ under his supervision for hazards at least once every four (4) hours during each working shift, or more often if necessary for safety. Upon completion of the examination(s) the foreman shall record the results and time(s) in a book prescribed by the Director. The mine foreman shall also, each day, read carefully and countersign with ink or indelible pencil all reports entered in the record book by the mine foreman or his assistants on the prior shift, and he shall supervise the foreman or his assistants.

Comment/Response: Countersign all books and records of the prior shift – The requirement to countersign the books is only indication that the oncoming foreman noted conditions in the book, not that he attest that the books includes any hazards in the work area. Also, we need clarification concerning “and he shall supervise the foreman or his assistants”

(b) It shall further be the duty of the mine foreman or the assistant mine foreman to carefully examine the haulage roads ~~in the pit area~~ at the surface mine for slips, cracks, overhanging trees and other dangerous conditions during his pre-shift and on-shift examinations.

27 10.3. Dangerous conditions. -- Should the mine foreman or his assistants find a place to be in a dangerous condition, they shall not leave the place until it is made safe, or shall remove the persons working therein until the place is made safe by some competent person designated for that purpose.

He shall also record any dangerous conditions and practices found during his examination in a book provided for that purpose.

27 10.4. Close deep operations. -- When a surface mine operations is known to be close to an active underground mine, the mine foreman or superintendent shall give the official representative of the underground mine at least twelve (12) hours notice in advance of any contemplated blasting that may endanger the safety of persons employed in the underground mine.

27 10.5. Instructions. -- The mine foreman shall see that every person employed to work at such mine shall, before the beginning work therein, be instructed in the particular dangers incident to his work in such mine, and be furnished a copy of the state surface mining rules and regulations. A record of such instructions shall be kept and made available upon request by an authorized representative of the Director.

Comment/Response: “Incident to his work” is somewhat in contradiction to an earlier subpart indicating “incident to his exposure.”

27 10.6. Records of examinations.

(a) All violations or hazardous conditions and the action taken to correct such violations or conditions including the pre-shift and on-shift examinations shall be recorded with ink or indelible pencil in a book prescribed by the Director of the Department of Energy Office of Miners’ Health, Safety and Training, and kept for such purpose at a place at the surface mine designated by mine management at the mine office for a period of one year. ~~All records of daily, and weekly reports as prescribed herein, shall be open for inspection by interested persons, and the record book shall be kept for a period of one (1) year.~~

~~27~~ 10.7. It shall be the duty of the mine foreman, assistant mine foreman to examine each mine within three (3) hours prior to the beginning of a shift and before any miner on such shift enters the active workings of the mine.

~~27~~ 10.8. The mine foreman shall give prompt attention to the removal of all dangers reported to him by his assistants, or any other person working in the mine, and in case it is impracticable to remove the danger at once, he shall notify all persons whose safety is menaced thereby to remain away from the area where the dangerous condition exists.

~~27-10.9~~ For those surface mines that do not employ five or more persons in a period of twenty-four hours and that do not have a certified mine foreman, the mine operator shall designate a competent person, as defined in 56 CSR § 3-3.87, to perform the duties of a mine foreman set forth in this section. The name of the designated competent person shall be recorded and such record shall be made available upon request.

§56-3-28 11. Duty of Mine Foreman to Notify Operator When Unable to Comply with Law; Duty of Operator.

~~28~~ 11.1. The mine foreman shall notify, in writing the operator or superintendent of the mine, and the director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training, of his inability to comply with any of the requirements of this law, and it shall then become the duty of such operator or superintendent promptly to attend to the matter complained of by the mine foreman so as to enable him to comply with the provisions hereof. Every operator of a mine shall furnish all supplies necessary for the mine foreman to comply with the requirements of this law after being requested to do so in writing by the mine foreman. For those mines employing less than five (5) persons in a period of twenty-four (24) hours and who do not have a mine foreman, a competent person, as defined in 56 CSR § 3.3.87, shall perform this duty.

§56-3-29 ~~12~~. Death Or Resignation Of Mine Foreman; Successor.

~~29~~ 12.1. In case of death or resignation of mine foreman, the superintendent or manager shall appoint a certified ~~man~~ person to act as mine foreman.

§56-3-30 ~~13~~. Excavating.

~~30~~ 13.1. Loose material removal. -- Loose hazardous material shall be stripped for a safe distance (~~minimum of fifteen (15) feet~~), except where vegetation is required to support the slope from the top of pit or highwalls, and the loose unconsolidated material shall be sloped to the angle of repose, or barriers, baffle boards, screen, or other approved devices that afford equivalent protection as otherwise provided for in the approved ground control plan.

~~30-13.2~~. Benches. -- When a bench is required to insure safe operations, the width and height of the bench shall be governed by the type of equipment to be used and the operations to be performed, type of material and height of wall.

30 13.3. Highwall and spoil bank work areas.

(a) Each operator shall establish and follow a ground control plan for the safe control of all highwalls, pits and spoil banks which shall be consistent with prudent engineering design and will ensure safe working conditions. The mining methods employed by the operator shall be selected to ensure highwall and spoil bank stability.

(b) The ground control plan shall, at a minimum, address the following conditions:

- i.) Benching;
- ii.) Pre-splitting of the highwall;
- iii.) Height of the highwall;
- iv.) Angle drilling;
- v.) Loose materials and trees;
- vi.) Vertical mud seams;
- vii.) Impounded water;
- viii.) Adequate water drainage;
- ix.) The angle of repose of spoil material.

Comment/Response: Ground Control Plan – What are the timelines for submission, approval and revisions? Are the ground control plans renewed yearly? Define “adequate water drainage and vertical mud seams”. Who will settle conflicts between the MSHA version and the State version of the Ground Control Plans. What is the point of having two plans? Will other topics or areas of concern be added to the Ground Control Plan? If so, at who’s discretion?

(c) The operator shall submit the ground control plan to the Office of Miners’ Health, Safety and Training for approval and such approval shall be obtained prior to implementing the plan. Any highwall failure that affects the safe working conditions of the surface mine shall be reported to the Office of Miners’ health, Safety and Training within twenty-four (24) hours of the time of the failure.

Comment/Response: Any highwall failure – More information is needed concerning the definition of “highwall failure”.

- (d) The ground control plan shall be revised when necessary to ensure safety. Any revisions to the ground control plan shall be submitted to the Office of Miners' Health, Safety and Training for approval and such approval shall be obtained prior to implementing the revised plan.

Comment/Response: "Shall be revised when necessary." What triggers a revision? What is the time frame for revisions? Will any delay stop mining operations?

(e) The highwall shall be sloped or benched when required by the ~~Department of Energy~~ Office of Miners' Health, Safety and Training, to prevent or minimize the danger of slide. All overhanging ledges and loose material shall be scaled from the highwall. When scaling of highwalls is necessary to correct conditions, a safe means shall be provided to perform such work.

(f) When the highwall is cracked and shows evidence of movement, or of weakening, the area shall be made safe or abandoned and dangered off.

(g) Trees endangering workmen along highwalls shall be removed. Trees that cannot be safely removed shall be barricaded and no work shall be done in the area. Such work shall be completed during daylight hours.

(h) Spoil banks shall be placed an adequate distance from the pit to prevent any material from rolling back and endangering the workmen. Spoils shall be kept free of bodies of water which would be hazardous in active work areas. Spoil material shall be sloped to the angle of repose or other measures taken to prevent the material from slothing, sliding, or rolling into the pit.

(i) Persons, other than those designated to correct unsafe conditions, shall not work near or under dangerous highwalls or banks.

(j) During bench loading, adequate precautions shall be taken to prevent equipment from going over a highwall.

30- 13.4. Examinations.

(a) Should a slide occur, a certified foreman or assistant shall examine the area of the slope for danger of additional slides. No person shall work in the area until the examination is complete and the area declared safe.

~~30~~ 13.5. Repairs in excavation areas. -- Special safety precautions shall be taken when persons are required to perform repair work between immobilized equipment and within twenty (20) feet of the highwall or spoil bank where such equipment may hinder escape from falls or slides. A competent person shall be designated to observe the highwall or spoil bank. If equipment is mobile and repair work is necessary on such equipment, such equipment will be moved to a location out by the highwall or spoil bank.

30 13.6. Tree removal. -- When men are in the area, suitable warning shall be given before equipment shoves over or uproots trees, and workmen shall be removed from the immediate vicinity.

30 13.7. Night work. -- When surface mining is performed at night, the pits, highwalls, and dump areas in the vicinity of the work shall be adequately illuminated.

Comment/Response: What is the definition of adequate illumination? Will equipment lighting be adequate on dump areas?

30 13.8. Dump areas.

(a) Safety berms shall be provided at the edge of all fill areas to prevent over- travel or overturning. The berm will consist of material end dumped and/or pushed by the fill dozer to create an adequate berm. The minimum height of the berm will be axle height of the largest rubber tire equipment working on the fill. Safety berms shall not be damaged by, or used as a stop block, by haulage equipment.

(b) Should the outer slope of the fill become steeper than the safe angle of repose, short-dumping procedures shall be initiated. Equipment operators and truck drivers operating on the fill will be informed of the steep slope condition and will be required to dump a minimum of one truck length from the edge of the fill. Short dumping shall continue until a safe angle of repose is established.

Comment/Response: Would the "steep slope condition" mentioned above fall under the "extreme slope" section of this regulation?

(c) In the event tension cracks appear near the outer edge of the fill, short dumping will be initiated. Equipment operators and truck drivers working on the fill will be informed of the tension cracks and will be required to dump a minimum of one (1) truck length from the tension cracks.

(d) In the event of tension cracks developing in a fill the following procedures shall be initiated:

(1) The fill dozer shall begin a cut a safe distance back from tension crack. The cut will extend forward to the edge of the fill.

(2) The dozer operator will take special precautions to prevent over- travel at the edge of the fill. This procedure will be utilized until the tension crack is removed.

(3) Material will be dumped at the back edge of the cut and pushed in place by the fill dozer to reestablish the safe working elevation. Should additional tension cracks occur these procedures will be repeated.

(e) The surface of the fill shall be graded/sloped to prevent water from impounding near the edge of the fill.

§56-3-~~31~~ 14. Drilling.

~~31~~ 14.1. Inspection. -- ~~Where required by the director, all~~ All drilling equipment shall be provided with restraining devices installed properly to prohibit the free fall of drill steels which may break or become ~~de threaded~~ unthreaded at the point of the adaptor.

~~31~~ 14.2. Horizontal drill.

(a) When horizontal drills are used, the operator shall not leave the controls while the drill stems are in operation.

(b) All persons shall be required to keep in the clear of auger and drill stems while in motion. No person shall be permitted to pass under or step over a moving drill stem or auger.

(c) Prior to horizontal holes being drilled in overburden, a careful inspection of the highwall face shall be made. All loose hazardous material shall be removed before other work is performed.

~~31~~ 14.3. Vertical drilling.

(a) When vertical drilling operations are being performed, the drill machine shall be continuously attended.

(b) When churn drills or vertical rotary drills are used, the drill machine operator shall not work under suspended tools. When collaring holes, inspecting, or during any operation where tools are removed from the hole, the tools shall be lowered to the ground or platform.

~~31~~ 14.4. General precaution (drilling).

(a) When drilling operations are being performed in the area of abandoned mines, special precautions shall be taken to protect against methane.

(b) In the event of a power failure, drill machine controls shall be placed in the neutral position.

(c) No person shall be permitted around auger and drill stems that are in motion.

(d) Starter hole drill steels shall be utilized when collaring holes with a hand-held drill.

(e) No person shall be permitted on the drill mast while the drill bit or carriage is in motion. Tools and/or other material shall not be left on the drill mast.

(f) Threads on all drill steels and related components shall be maintained in a safe working condition.

Comment/Response: "Related components and safe working condition" is too vague.

34 14.5. Drilling position.

(a) Drill machine operators shall not drill from positions that hinder their access to controls levers, or from insecure footing, or staging, or from atop equipment not designated for this purpose.

(b) Men shall not hand grasp the drill steel while collaring holes or place their hand on the chuck or centralizer while drilling.

(c) Men operating or working near jackhammers or jackleg drills, shall position themselves so they will not be struck or lose their balance if the drill steel breaks.

(d) No holes shall be drilled within six (6) feet of the highwall. Drills shall not be positioned near the edge of the highwall where safe egress from the operator's cab cannot be maintained.

Comment/Response: We need a clarification of "highwall". Is it 10', 50' or 100'? Does this language address the drills position above or below the highwall?

(e) When drilling near a highwall, the drill shall be positioned so the operator's cab is on the side of the drill away from the highwall.

34 14.6. Movement of drills.

(a) Vertical drill holes and blast crevices that remain open after blasting and constitute a hazard shall be protected to prevent persons from falling into them.

(b) While moving a drill machine from one (1) area to another, drill steel tools and other equipment shall be secured and the mast placed in a safe position.

(c) The location of the drill machine helper shall be known to the drill machine operator at all times while such drill is being moved.

(d) Hand-held air drills shall be turned off and all air bled from air hoses before such drill is moved from one (1) working area to another and at the end of each shift.

(e) ~~The Director of the Department of Energy~~ Secretary of the West Virginia Department of Environmental Protection shall be responsible for the examinations and certification of persons engaging in or directly responsible for blasting or use of explosives in surface mining operations.

~~§56-3-32~~ 15. Explosives and Blasting.

32. 15.1. Transportation vehicles. -- Motor vehicles used to haul explosives shall comply with the following provisions:

(a) Portable fire extinguisher. -- A portable fire extinguisher shall be a multi-purpose dry chemical type, containing a nominal weight of five (5) pounds of dry powder and enough expellant to apply the powder; or a foam-producing type containing at least two (2) and one-half (1/2) gallons of foam-producing liquid and enough expellant to supply foam. Only fire extinguishers approved by the Underwriters Laboratories, carrying appropriate labels as to type and purpose, shall be used.

(b) All electric wiring shall be adequately protected and securely fastened. Damaged insulated wiring shall be repaired or replaced immediately.

(c) Chassis, engine, pan and bottom of vehicle body shall be reasonably clean and free of oil and grease. Cargo bins shall be cleaned as often as necessary to prevent the accumulation of ammonium nitrate or emulsion on/atop the bins.

(d) Fuel tanks and lines shall have no leaks.

(e) Safety devices including but not limited to lights, horn, brakes, windshield wipers, and steering apparatus shall be functioning properly.

(f) When explosives are not transported in their original closed containers, or in special closed cases constructed of nonconductive material, the vehicle cargo space shall be lined with wood or approved nonsparking material.

(g) The vehicle shall be plainly marked to indicate the nature of the cargo.

(h) The vehicle shall be equipped with suitable side and tailgates. The explosives shall not be piled higher than the side or end.

(i) Handrails or fall protection devices shall be provided when persons are required to work atop of the cargo bin of the bulk explosives truck.

(j) Proper maintenance and examinations of the emulsion pump shall be performed. (to prevent overheating of the emulsion pump and a record of the examinations shall be kept at the mine for one year and made available to a representative of the Director upon request.)

Comment/Response: Overheating emulsion pump – At what temperature and for what duration is the emulsion pump assumed to have overheated? How frequent of examination is required?

32 15.2. Transportation of explosives - precautions.

(a) Explosives and/or detonators shall not be transported in the same vehicle unless separated by a substantially fastened four-inch (4") hardwood partition or equivalent approved material.

(b) Explosives and/or detonators shall be transported promptly without undue delays.

(c) Only those persons necessary shall be permitted ~~to ride on or~~ in vehicles containing explosives and/or detonators.

(d) When vehicles containing explosives or detonators are parked on a grade, the parking brakes shall be set and the vehicle blocked securely against rolling.

(e) Vehicles containing explosives and/or detonators shall not be taken to a repair garage or shop.

(f) Vehicles containing explosives and/or detonators shall not be left unattended unless the vehicle and all compartments containing explosives and/or detonators are properly locked to prevent unauthorized access.

(g) Safe roads shall be maintained for access and exit to all blast areas where boreholes are loaded, or being prepared to be loaded.

Comment/Response: Define "safe roads"?

32 15.3. General requirements - explosives.

(a) After the effective date of the certified blasters rules and regulations, all handling and transporting of explosives shall be under the direct supervision of a certified blaster.

(b) ~~Previously frozen explosives of nitroglycerin base shall not be used.~~ The transportation, storage, handling and use of explosive materials and blasting accessories shall be in accordance with the current Institute of Makers of Explosives Warnings and Instructions. A copy of the current Institute of Makers of Explosives Warnings and Instructions shall be posted at the mine. All persons involved in the blasting procedure shall be properly trained and familiar with these Warnings and Instructions and a record kept of this training for one (1) year and made available to a representative of the Director upon request.

Comment/Response: Warnings and Instructions posted – Where should they be posted? Who is required to conduct the training?

(c) Open fires and flames are prohibited within fifty (50) feet of the area where explosives are being stored, handled or used. Any person who violates this subsection shall be subject to the maximum assessment of two hundred fifty dollars (\$250).

(d) Explosives and detonators, (blasting caps and electric blasting caps) shall not be carried in pockets of clothing or left lying around unguarded.

(e) The use of explosives and all handling incident thereto, will be discontinued during the approach of and during ~~thunderstorms and/or~~ electrical storms and all personnel shall be withdrawn from the blast area. When drills are located on a bench with loaded holes, or holes being loaded, masts shall be lowered upon the approach of an electrical storm.

Comment/Response: Approaching storms – What determines “approaching storm”? Distances? How will this be measured? Lowering of masts – Lowering of drill masts may not be practical if the drill is idle or not manned at the time of the storm.

(f) All runways, chutes and conveyors used for unloading of explosives shall have no exposed sparking metal parts.

(g) Explosives and detonators shall be kept a safe distance from the highwall and spoil bank.

(h) Driving vehicles or dragging boxes over firing lines, detonator wires, explosives, blasting agents, and detonators shall be prohibited. *The driving of any vehicles* (backing of drills) *over loaded holes shall be prohibited.*

(i) Previously frozen explosives of nitroglycerin base shall not be used. Deteriorated or damaged explosives and detonators shall be destroyed by an authorized representative of the manufacturing company.

(j) Explosives and/or detonators shall not be transported in a bucket or a dragline or like equipment.

(k) Defective or damaged blasting equipment or accessories shall not be used.

32 15.4. Shooting preparation.

(a) Primers shall not be made up until ready to be inserted in the hole.

(b) Two (2) way radio equipment shall be turned off prior to the handling and use of electric detonators for proposed shot. This rule does not apply to radios operating beyond the distances shown on Table 38-3A found at the end of this regulation section. Adequate warning signs shall be located on all travel roads at a distance of not less than one hundred (100) feet from the minimum transmitting distance. When using electronic detonators, the detonators shall be protected from electromagnetic, radio frequency transmissions, or other electrical interference sources in accordance with the manufacturer’s recommendations.

(c) No equipment except the drill and explosive truck, other than necessary equipment for road repairs to remove the drill or explosive truck, shall be permitted to work within fifty (50) feet of loaded holes or holes being loaded. Equipment powered by external electrical sources and power cables shall be prohibited from being within one hundred (100) feet of loaded holes or holes being loaded; where such equipment is being used and electrical detonators are being used, stray current test shall be made on the bench prior to commencing the loading of holes, if current is detected, such power cables be moved to a safe distance or the power cables shall be deenergized. This distance of fifty (50) feet shall include the entire column of the loaded hole when equipment is excavating on the same bench level as loaded holes. In cases of emergency, in which the equipment indicated above has malfunctioned and cannot be removed from the area, the blaster and certified foreman shall direct the use of maintenance equipment if required to safely repair and/or remove the disabled equipment from the area. Adequate precautions shall be taken to prevent extraneous electricity from

entering an ~~electric~~ (electrical) blasting circuit. Electrically-powered equipment and trailing cables shall be prohibited from being within one hundred (100) feet of loaded holes or holes being loaded. When a potential source of extraneous electricity is present in the general area and ~~electric~~ (electrical) electrical blasting circuit. Electrically-powered equipment and trailing cables shall be prohibited from being within one hundred (100) feet of loaded holes or holes being loaded. When a potential source of extraneous electricity is present in the general area and electrical detonators are to be used, a stray current test shall be made on the bench prior to commencing loading holes; if current is detected, the source of the extraneous electricity shall be neutralized before loading may begin.

Comment/Response: (50) feet shall include the entire column – Would this preclude any coal loading, etc at the base of a wall having loaded holes? Is loading coal considered excavating work to be covered under the (50) foot zone for the entire column of the loaded hole? “When a potential source of extraneous electricity is present in the general area”- This sentence needs an explanation.

(d) Holes shall not be drilled if there is danger of intersecting a loaded or a misfired hole. When drill(s) are being operated on a bench being loaded, a minimum of one hole around the perimeter of the drill shall remain unprimed and unloaded.

(e) Only wooden or other approved nonsparking implements shall be used to punch holes in an explosive cartridge.

(f) Tamping poles shall be blunt and squared at the end and made of wood or other, nonsparking, approved material.

(g) Tamping shall not be performed directly on a capped primer.

(h) When a surface mine has cut into a known active underground mine, the surface mine inspector of the district and an official representative of the deep mine shall be notified before any blasting is performed. The surface mine inspector, deep mine representative and surface mine representative shall determine and agree during what hours blasting shall be performed.

(i) Misfires shall be handled only by or under the direction of a designated blaster ~~or~~ and certified foreman.

(j) ~~Blasting caps shall be crimped to fuses only with implements designed for that specific purpose.~~ In order for the blaster to maintain control of the shot, up to the point of detonation, no type of safety fuse detonators shall be used.

~~(k) In no case shall any forty (40) second per foot safety fuse less than thirty six (36) inches long or any thirty (30) second per foot fuse less than forty eight (48) inches long be used.~~

~~(l) Nothing except a safety fuse is to be inserted in the open end of a blasting cap.~~

~~(m)~~ (k) No detonators, detonating cord, igniter cord, ~~safety fuse~~, or any explosives shall be used if they have been water soaked.

~~(n)~~ (l) Electric blasting caps shall be fired with an approved blasting device.

~~(o)~~ (m) Explosives shall be kept separated at least fifteen (15) feet from detonators until loading is started, unless an approved container is utilized.

~~(p)~~ (n) Ample warning shall be given by an approved audible warning device before blasts are fired. All persons shall be removed from the blasting area.

~~(q)~~ (o) Detonating caps taken into a pit prior to being used shall be kept in a wooden box or other approved suitable container.

~~(r)~~ (p) At least a five (5)-foot air gap shall be provided between the blasting circuit and the power circuit when the hole or series of holes are being connected.

(q) When loading beneath highwalls, the highwall shall be carefully inspected by the blaster and foreman in charge before beginning the loading process. Persons shall not load boreholes in areas where the highwall is unstable. For those surface mines that do not employ five or more persons in a period of twenty-four hours and that do not have a certified mine foreman, the mine operator shall designate a competent person, as defined in 56 CSR § 3.3.87, to perform the duties of the foreman in charge set forth in this section. The name of the designated competent person shall be recorded and such record shall be made available upon request.

Comment/Response: Person shall not load boreholes in areas where the highwall is unstable – Define “unstable”.

(r) Boreholes shall not be located near the outer edge of highwalls where such location could create a danger of falling over the highwall by persons loading boreholes. Boreholes located dangerously close to the outer edge of the highwall shall not be loaded. Persons loading boreholes shall not work within six (6) feet of the outer edge of the highwall.

Comment/Response: 14.5.d states that holes shall not be drilled within 6 feet of the edge of a highwall. Is this “6 feet” referring to the above paragraph of “dangerously close” to the outer edge of the highwall?

32-15.5. Shooting Cables- Firing/Lead lines.

(a) Firing/Lead lines ~~Shooting cables~~ shall be well insulated and as long as may be necessary to permit persons authorized to fire shots to get in a safe place out of the line of fire.

(b) Firing/Lead lines ~~Shooting cables~~ shall be kept away from power wires and all other sources of electric current.

(c) When shooting highwall and overburden, the firing/lead lines ~~shooting cable~~ shall be at least five hundred feet, (one thousand (1000 feet) in length. ~~when new and never less than four hundred fifty (450) feet.~~

(d) The firing/lead lines ~~shooting cable~~ for use in popping coal shall be of sufficient length to assure the safe location of persons participating in the blasting, and in no event less than ~~one~~ five hundred (400 500) feet in length.

(e) When using electric caps the firing/lead line ~~shooting cable~~ shall be kept shunted until connected to the approved blasting device.

(f) Except when being tested with a blasting galvanometer, or other approved device, electric detonators shall be kept shunted until they are connected to the ~~blasting~~ firing/lead line or wired into a blasting round.

(g) A wired round shall be kept shunted until connected to the ~~shooting cable~~ firing/lead line when using electric caps.

(h) The blast area shall be cleared of personnel, vehicles, and equipment prior to connecting the firing/lead line to the firing device or blast controller or in the case of remote-controlled detonation systems, prior to arming the firing device.

(i) Remote control detonation systems shall be used in accordance with manufacturer's instructions. A copy of these instructions shall be posted at the mine. All persons involved with the blasting procedure shall be properly trained and familiar with the manufacturer's instructions. A record of such training shall be kept for one (1) year and made available to a representative of the Director upon request.

(j) When using electric or electronic detonators, adequate precautions (shall) may be provided to prevent accidental electrical shock to the person(s) detonating the blast. Provisions shall include, but not be limited to, insulating and guarding the firing/lead line connections to the firing device or blast controller, providing and using insulating mats on which the blaster may stand and also place under the firing device or blast controller, the use of an additional properly-timed detonator placed in the firing/lead line to sever the line and prevent the possibility of electrical feedback to the firing device or blast controller. and use of a remote firing device.

32 15.6. Blasting.

(a) Any area in which ~~loaded~~ holes are ~~prepared to be fired~~ being loaded shall be guarded by a ~~barrier~~ barriade and danger signs located 50 feet beyond/outby the perimeter of loaded holes, or by a person physically present to prevent unauthorized entry.

(b) The blaster shall make sure that all persons are in a safe place before firing a shot. Additional personnel and radio communication, if needed to assure security of the blast area shall be

utilized. Radio silence shall be observed by all persons except those involved in the blasting procedure. An approved audible warning device shall give ample warning before blasts are fired. The pre-blast warning signal shall be sounded three (3) minutes prior to the detonation of the blast and this signal shall consist of three short warning signals with five (5) second intervals between these signals. The post-blast signal that the blast area is clear shall consist of a twenty (20) second in duration signal. The warning shall be audible for a distance of at least one-half (1/2) mile.

(c) ~~The blaster performing the blasting shall be the person who makes the detonating cord connections or connects the leg wires of the detonating caps to the shot cable. The blaster shall assure that all components are properly connected to assure proper detonation of the blast.~~

(d) All holes or series of holes containing detonators shall be fired immediately upon completion of loading. The blaster shall notify the supervisor in charge of workers in the area before commencing to connect loaded holes. Once beginning to connect loaded holes, this shall proceed without delay until all holes are connected. All persons within a three hundred (300) foot radius of the blast area shall be removed by the time all holes are connected and work shall not commence again until the holes have been fired. However, after connecting the loaded holes, if for any reason the holes cannot be fired immediately, all work shall cease within a radius of three hundred (300) feet of the blasting area and work shall not commence again until the holes have been fired. not commence again until the holes have been fired or all holes disconnected.

Comment/Response: All holes containing detonators shall be fired immediately upon completion of loading – We need a clarification of “holes fired immediately upon loading”

(e) The firing of holes shall be conducted during daylight hours.

(f) ~~After a blast the blaster shall examine the area and pronounce it safe before others enter. Every reasonable effort shall be made to fire loaded holes on the shift they are loaded. However, if loaded holes must be left over night the following safeguards shall be utilized:~~

1. As a practice, connected holes shall not be left overnight unless emergency conditions exist (example: electrical storms) that do not allow the shot to be detonated. No persons shall be permitted within three hundred (300) feet of the blast area where connected loaded holes could not be detonated as planned.

2. The blaster, in conjunction with the certified foreman, shall properly designate the area affected by unfired holes (connected/unconnected). Barriers (cones and flagging) and signs, or a person physically present shall prevent personnel and/or equipment from entering the affected area.

3. The location of the unfired loaded holes shall be documented in the pre-shift/on-shift examination book.

4. All personnel on affected shifts shall know the route in which to travel to a safe location in the event unforeseen circumstances (electrical storms, unstable highwalls, etc.) arise while working in the area of unfired loaded holes.

(g) When loading boreholes containing water, or if loaded holes are to be left for an extended period of time, sufficient slack in downlines shall be provided to prevent stretching and possible damage to downlines due to settling of material in the borehole.

(h) When drilling and blasting in areas where underlying coal seam(s) are burning, or suspected of burning, a plan outlining safeguards to be provided for the protection of workers shall be submitted for approval to the West Virginia Office of Miners' Health, Safety and Training. Such drilling and blasting shall not commence until approval is granted.

32 15.7. Post firing.

(a) Shooting cables shall be disconnected immediately from the blasting unit after each blast and shunted. The firing lines/lead lines shall be disconnected from the electrical power source immediately after each blast when electric or electronic detonators are used.

(b) No person shall return to the area where blasting has been performed until the dust has settled and the area cleared of smoke. The blaster shall not return to the area where blasting has been performed until the dust, smoke and fumes have cleared. *Or a minimum of five minutes has passed.*

(c) After a blast, the blaster shall examine the area and pronounce it safe before others enter the blast area.

32 15.8. Misfires.

(a) When electric blasting caps have been used the blaster or no other person shall not return to misfired holes for at least fifteen (15) minutes. When a misfire is detected, no persons shall return to the misfired holes for at least fifteen (15) minutes. Misfires shall be handled only by a designated blaster in the presence of the mine/pit foreman.

(b) When a shot has misfired, extra precaution shall be taken in the handling of the misfires. If a misfire is detected, the blaster and the foreman in charge shall determine the necessary action to be taken to safely correct the situation. For those surface mines that do not employ five or more persons in a period of twenty-four hours and that do not have a certified mine foreman, the mine operator shall designate a competent person, as defined in 56 CSR § 3.3.87, to perform the duties of the foreman in charge set forth in this section. The name of the designated competent person shall be recorded and such record shall be made available upon request.

(c) The blaster shall wait thirty (30) minutes before returning to a misfired shot, when using blasting caps and fuse. When a misfire/unfired explosives exists, or are suspected to exist, all persons working in the area shall be notified and given instructions on proper handling of possible undetonated explosives. The location of these holes shall be recorded in the pre-shift/on-shift book.

(d) ~~After shooting a misfired shot, the blasting cable shall be disconnected from the source of power and the battery end short circuited before electric connections are examined.~~ Immediately after firing a misfired shot, the firing/lead lines shall be disconnected from the firing device or blast controller when electric (or electronic detonators) are used. When using electric detonators, the ends of the firing/lead lines shall also be shunted. When using electronic detonators, follow the manufacturer's recommendations.

(e) If explosives or blasting agents are suspected of burning in a hole, all persons in the blasting area shall move to a safe location and no person shall return to the hole for at least one (1) hour.

32 15.9. Storage of explosives.

(a) After loading boreholes all unused explosives shall be returned to the proper explosive storage magazine.

(b) Separate surface magazines shall be provided for storage of explosives, detonators, and blasting heater elements. Surface magazines shall be constructed of incombustible material exposed inside the magazine. Surface magazines shall be provided with doors constructed of at least one-fourth (1/4) inch steel plate lined with a two (2) inch thickness of wood, or the equivalent, provided with adequate and effectively screened ventilation openings near the floor and ceiling, kept locked securely when unattended, posted with suitable danger signs so located that a bullet passing through the face of the sign will not strike the magazine. The location of the magazine shall not be less than two hundred (200) feet from any active work area, occupied buildings, or public roads unless barricaded. If magazines are illuminated electrically the lamps shall be of vapor-proof type, properly installed and wired. Smoking, open flames, open lights or spark-producing devices shall be prohibited in or within fifty (50) feet of a detonator or explosive magazine or facility.

(c) Explosives magazines shall be located at least one hundred (100) feet away from power lines and fuel storage areas.

(d) Cases or boxes containing explosives shall not be stored on their ends or sides in magazines nor stacked more than six (6) feet high.

(e) An area of twenty-five (25) feet around magazines shall be kept clear of dry leaves, grass, undergrowth, trash and debris.

(f) Detonator and explosives storage magazines shall be separated by at least twenty-five (25) feet.

(g) Ground rods shall be properly installed and secured on explosive storage magazines so as to provide sufficient electrical ground.

(h) Semitrailer van(s) used for highway or on-site transportation of blasting agents are satisfactory for storing these materials, provided they are located according to the American Table of Distance with respect to inhabited buildings, passenger railroads and public highways. Trailers will be provided with substantial means for locking, and the trailer doors shall be kept locked except during time of placement and removal of blasting agents.

TABLE 38-3A

Transmitter Power (Watts) (except FM mobile)			Minimum Distance (Feet)
5	-	25	100
25	-	50	150
50	-	100	220
100	-	250	350
250	-	500	450
500	-	1000	650
1000	-	2500	1000
2500	-	5000	1500
5000	-	10000	2200
10000	-	25000	3500
25000	-	50000	5000
50000	-	100000	7000

Transmitter Power (Watts) (FM mobile)			Minimum Distance (Feet)
1	-	10	5
10	-	30	10
30	-	60	15
60	-	250	30

§56-3-33 16. Underground Workings.

33 16.1.

(a) The operator shall refrain from surface mining within five hundred (500) feet of any active and abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners: **Provided**, That the director shall permit an operator to mine near, through or partially through an abandoned underground mine or closer to an active underground mine if: (a) the nature, timing and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities are coordinated jointly by the operators involved and approved by the Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training, and (b) such operations will result in improved resource recovery, abatement of water pollution or elimination of hazards to the health and safety of the public: **Provided**, That any breakthrough which does occur shall be sealed.

(b) The official representative of any known underground mine shall be notified immediately when a surface mine operation may in any way interfere with the safe operation of the active underground mine.

(c) Special precautions shall be taken to protect the employees where excavating is being performed in the vicinity of a known abandoned underground mine which may contain a dangerous accumulation of water and/or gas.

(d) All cut-through into underground mine workings shall be closed immediately.

§56-3-34 17. Haulage.

34-17.1. Roads - traffic directions and warning signs.

(a) Traffic directions which differ from standard highway practice shall be posted on signs along the haulage roads at strategic points in letters at least three (3) inches high.

(b) Well marked signs conspicuously placed, shall be properly located to alert drivers to existing danger areas. Such as the approach to a dangerous curve or extreme grade.

(c) Traffic rules, signals, and warning signs shall be standardized at each mine.

(d) Where side or overhead clearances on haulage roads or loading or dumping locations are hazardous to mine workers, such areas shall be conspicuously marked and warning devices shall be installed when necessary to insure the safety of the workers.

(e) Flashers, flares, or other means of signaling shall be used to warn approaching drivers of a hazard created by an obstruction in the roadway.

(f) Regulatory signs shall be used to indicate required method of traffic movement, (Example: "Stop", "Yield", "One Way".)

(g) Posted warning signs shall be used where necessary to indicate potential hazardous conditions. (Example: "Hill", "Curve", "Truck Crossing".)

(h) Object marking shall be used to mark physical obstruction in or near the haulage way that presents possible hazards. (Example: Reflectors and high visibility paint.)

(i) All signs and markings shall be displayed and utilized so as to be effective as possible.

(j) Where side or overhead clearance on any haulage road or at any loading or dumping location at a surface mine is hazardous to any person, such hazard shall be corrected immediately, and all necessary precautions taken while such hazard is being corrected.

34 17.2. Haulage roads - construction and maintenance.

(a) Haulage roads shall be located an adequate distance from highwalls and spoil banks to minimize the danger of falling material onto personnel and equipment.

(b) When dust created by haulage is thrown into suspension in such quantities that may obscure the vision of the operators of vehicles, and adequate means shall be taken to allay such dust.

(c) Only authorized persons shall be permitted on haulage roads and at loading or dumping locations.

(d) Berms or guards shall be provided ~~where required on the outer bank of elevating~~ elevated roadways.

(e) The width and grade to be utilized in haulage road construction shall be determined for each specific situation based upon terrain configuration, vehicle characteristics, and driver visibility for safe haulage.

(f) Haulage roads shall be constructed of sufficient width to permit the driver to maneuver his vehicle to avoid striking unexpected obstacles on the roadway where reclamation regulations permit.

(g) Provisions shall be made to adequately drain and remove excessive water from the haulage roads.

(h) Haulage roads shall be constructed, installed and maintained in a manner consistent with speed and type of haulage operations being conducted to insure safe operation. All roads leading to and from work sites on which persons are expected to travel to and from work or to haul coal or supplies, shall be of sufficient width and be maintained in good condition.

(i) Haulage operations shall be stopped when the haulage surface has deteriorated to the extent that it presents a danger to the safety of the haulage operation.

(j) ~~All haulage vehicles placed into service after the effective date of these rules and regulations shall be equipped with an approved supplementary emergency braking system. When required by the director or his authorized representative approved runaway roads or suitable equivalent shall be provided on all haulage roads on which coal is first hauled from such surface mine after the effective date of this section.~~

(k) All power lines constructed over haulage roads after the effective date of this section shall be maintained a minimum of twelve (12) feet above all equipment used on haulage roads including dump trucks in a raised position.

34 17.3. Haulage equipment - construction and maintenance.

(a) Haulage trucks shall not be operated with dirty windshields, cracked, dirty, or broken rear view mirrors.

(b) Supplies, materials, and tools other than small hand tools shall not be transported with persons in vehicles unless such vehicles are specifically designed to make such transportation safe.

(c) All new haulage vehicles placed into service shall be equipped with an emergency steering and braking system.

(d) Where required by the director, trucks used for haulage of coal, men or supplies shall be equipped with two (2) way communication instruments.

~~(e) Where required by the director or his authorized representative runaway roads or "J" roads shall be provided on all haulage roads on which coal is first hauled from such surface mine after the effective date of this section. All haulage vehicles placed into service after the effective date of these rules and regulations shall be equipped with an approved supplemental emergency braking system.~~

34 17.4. Haulage equipment - operation.

(a) Haulage truck operators shall make sure their truck path is unobstructed, especially when starting or moving the trucks forward or backward.

(b) Radio or visual contact shall be made with an operator of a haulage truck to insure that it is safe to approach the truck.

(c) Vehicles shall follow at a safe distance: passing shall be limited to areas of adequate clearance and visibility.

(d) Men shall not work or pass under the buckets or booms of loaders in operation.

(e) Drivers shall drive their trucks according to the condition of the road and the weather. At no time shall truck speeds exceed the safe predetermined speed limit that has been established on that haul road.

(f) Haulage trucks traveling in the same direction, shall not pass any vehicle until signals have been exchanged between both drivers and the vehicle to be passed pulls to the right side of the road.

(g) Haulage trucks shall maintain a safe distance between the trucks they are following. Other vehicles shall maintain a minimum of one (1) car length for each ten (10) m.p.h. of travel in back of the vehicle they are following.

(h) When approaching a state or county road, drivers shall maintain their trucks under control to stop, yield right of way, or obey the signals of a flagman.

(i) When the body of a haulage unit is being raised, no person will be permitted in close proximity where they may be endangered.

(j) Materials or equipment required in the cab of haulage equipment shall be adequately secured.

(k) Operators of equipment used to haul coal exclusively or principally on mine permitted property shall possess a surface miners' certification. Anyone performing these duties prior to the effective date of this regulation shall be granted a surface miners' certification upon validating that he/she has six months employment and 108 shifts at a surface mine and successfully completes the surface miner examination administered by the Office of Miners' Health, Safety and Training.

34 17.5. Parked vehicles.

(a) Lights, flares, or other approved warning devices shall be adequately located when parked equipment creates a hazard to vehicular traffic.

(b) Mobile equipment shall not be left unattended unless the brakes are set, ~~the~~ The wheels shall be turned into a bank or berm, or shall be blocked, when such equipment is parked on a grade.

34 17.6. Employee parking and mantrips.

(a) On all active surface mines, a designated area shall be provided for parking of employee's vehicles. All employees shall park their personal vehicles at the designated parking area. Sufficient illumination shall be provided at all parking areas and parking areas shall be maintained in good condition.

Comment/Response: The term "Sufficient" is vague. How will "sufficient" be determined?

(b) No vehicle or other conveyance used to transport persons to and from work areas at surface mines shall be overcrowded and all persons shall ride in a safe position.

(c) All mantrips shall have ten (10) unit first aid kits, two-way communication, and audible warning devices, and equipped with strobe lights and/or whip antennae with florescent flag or equivalent.

§56-3-35 18. Auger Mining.

35 18.1. Proximity to underground workings.

(a) Auger mining should not be done in proximity to active underground workings unless the work is coordinated with the underground plan or workings. Auger holes should not be drilled so as to: (1) disrupt the ventilation systems of active underground mines; (2) create inundation hazards to active underground mines; and (3) cause damage to the roof and ribs of active and underground roadways.

(b) Auger holes should not intersect underground mine workings known to contain or suspected to contain dangerous quantities of impounded water, except to de-water such areas under controlled conditions and then only after all necessary precautions have been taken to safeguard life and property.

35 18.2. Safeguards - auger areas generally.

(a) Adequate approved means shall be provided to prevent unauthorized persons from entering areas where coal has been removed.

(b) Warning signs shall be posted conspicuously at the entrances to abandoned auger operations.

(c) Completed auger holes shall be blocked with highwall spoil to a minimum height of one (1) foot above the coal bed and to within one thousand (1,000) feet of the active holes.

(d) Adequate precaution shall be taken when any auger hole or holes are not blocked with highwall spoil to insure unauthorized entry.

(e) All haulroads entering auger pits shall be barricaded to insure against unauthorized vehicles when auger holes are left unguarded.

35 18.3. Protection of workers.

(a) No person or persons shall enter an auger hole until a qualified employee has determined by recognized means of detection whether the air within the hole is of good quality and does not contain methane or is deficient in oxygen. The examiner shall wear a lifeline that extends to the hands of a person on the surface.

(b) Persons entering an auger hole should examine and test its walls for danger from falling materials. Any hazardous conditions found should be corrected before any other work is done or the hole vacated and suitable danger boards placed across its entrance.

(c) Augers which are provided with walkways or platforms, where practicable shall be equipped with safe handrails.

~~35~~ 18.4. Auger operations.

(a) Haulage trucks awaiting loading shall park a safe distance from the highwall and spoil bank.

(b) No person or persons other than the auger crew shall be allowed on or around the auger when in operation unless in line of duty.

(c) Only the truck being loaded and one (1) other truck shall be in the auger pit.

(d) Open lights and smoking materials are prohibited in auger holes.

(e) "No Smoking" signs shall be posted in close proximity where auger holes are being drilled.

(f) When auger holes first penetrate abandoned or mined out underground workings, and as frequently thereafter as these workings are penetrated a qualified employee should determine, by recognized means of detection, whether or not methane or oxygen deficient air is present or is being emitted in dangerous quantities.

(g) The operator shall not leave the controls while the auger is being operated.

(h) No person or persons shall be allowed to be on the top of the cab of the carriage engine for any reason while it is moving, or when the auger train is in motion.

(i) Partitions of coal between auger holes shall be adequate enough to support highwall when augering operations are being performed.

(j) Partitions of coal between auger holes shall not be recovered by other methods of mining without the approval of the Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training.

(k) Adequate illumination shall be provided for work areas after dark.

(l) Persons shall keep clear of the auger train while it is in motion and shall not pass under or over an auger train, except where suitable crossing facilities are provided. Persons shall keep clear of auger sections being swung into position.

(m) Where practicable, no persons shall be in a direct line with the boreholes during mining operations.

~~35~~ 18.5. Methane and oxygen.

(a) Auger mining equipment shall not be operated in the vicinity of auger holes emitting dangerous quantities of methane or air until the atmosphere has been rendered harmless.

(b) Internal combustion engines in the vicinity of auger holes shall be stopped while auger holes are being inspected.

(c) Combustible materials, dinner pails, or other supplies shall not be stored in auger holes.

(d) Auger mining machines shall be equipped with a permissible ~~flame safety lamp or other detector approved by the director~~ approved detector.

(e) In each auger mining crew there shall be a person qualified in the care and use of permissible ~~flame safety lamp or other approved~~ approved detector ~~oxygen detecting measuring device~~.

(f) Tests for oxygen deficiency shall be conducted with a permissible ~~flame safety lamp or other means~~ detector approved by the director and all tests for methane shall be conducted with an approved ~~methane~~ detector

(g) When an auger hole penetrates an abandoned or mined out area of an underground mine, tests for methane and oxygen deficiency shall be made at the collar of the hole by a qualified person, using approved devices to determine if dangerous quantities of methane or oxygen deficient air are present or being emitted. If such is found no further work shall be performed until the atmosphere has been made safe.

~~35~~ 18.6. Inspections.

(a) Auger operators shall inspect their machine before starting and operating to determine such machine is in a safe operating condition and all safety equipment is provided.

(b) No work shall be performed under any overhang. When a crew is engaged in connecting or disconnecting auger sections for maintenance, repair, or other reasons besides regular operations, at least one (1) person shall be assigned to observe the highwall for possible movement.

(c) The face of all highwalls, for a distance of one hundred (100) feet on both sides of each drilling site, shall be inspected by the auger operator and the foreman before any augering operation is performed. All loose hazardous material shall be removed from the highwall before persons are permitted to enter the drilling area.

§ 56-3-19 Highwall Mining

19.1 General Precautions

(a) Highwall mining plans shall be formulated to minimize the possibility of the unplanned collapse of partitions between the miner entries. Partitions of coal between miner entries shall be adequate to support the highwall when mining operations are being performed.

(b) Highwalls shall be safely constructed to minimize danger to workers by techniques such as (1) pre-splitting highwalls, (2) angle drilling, (3) safety benches and (4) scaling of loose/hazardous materials, brows, and overhangs.

(c) Adequate means shall be taken to allay coal dust being thrown into suspension in harmful or explosive quantities.

(d) Dust shall be controlled by the use of permissible dust collectors or other approved methods.

(e) The face of all highwalls, for a distance of one hundred (100) feet on both sides of the highwall miner, shall be inspected by the foreman and highwall miner operator before any mining operation shall be performed.

(f) The pit in which the highwall miner is being used shall be of sufficient width to safely operate all equipment used during the mining process.

(g) No unauthorized person shall be allowed in the area where highwall mining is being conducted.

(h) Danger signs shall be conspicuously posted at all entrances to the area where highwall mining is being conducted.

(i) Completed entries shall be blocked with highwall spoil to a minimum height of one foot above the coal bed and to within one thousand (1000 feet) of the active workings. Adequate precaution shall be taken to insure against unauthorized entry when any highwall miner openings are not blocked.

(j) No smoking or open flames shall be permitted within one hundred fifty (150) feet of highwall miner openings. No smoking signs shall be conspicuously posted in the pit where the highwall miner is operating or in pits where highwall miner openings are present.

(k) Records and maps shall be kept showing the height, width, depth, and spacing of all entries mined.

(l) At the close of the highwall mining operation, maps shall be submitted to the Office of Miners' Health, Safety and Training for map archiving purposes.

(m) All maintenance on the continuous highwall miner shall be performed a safe distance away from the highwall. For continuous highwall miners equipped with canopy protection, the continuous highwall miner shall be pulled back under the canopy for servicing or routine maintenance. No routine maintenance or servicing shall occur at the highwall entry.

(n) A portable fire extinguisher containing a nominal weight of at least five (5) pounds shall be kept on each piece of mobile equipment.

19.2 Proximity To Underground Workings

(a) Highwall mining shall not be performed within five hundred (500) feet of any active or abandoned mines without complying with 56 CSR § 3.33. Highwall mining shall not (a) disrupt the ventilation systems of the underground mines, (b) create inundation hazards to active underground mines, and (c) cause damage to the roof or ribs of active underground entries.

(b) Highwall mining shall not intersect active or inactive mine workings.

(c) In addition, highwall mining shall be conducted in accordance with 56 CSR § 3-33.1.

19.3 Proximity to Wells

(a) No highwall mining shall occur within fifty (50) feet of any well or hole drilled through the coal seam unless prior approval is obtained from the Office of Miners' Health, Safety and Training.

(b) Highwall mining into and through wells or holes drilled through the coal seam shall not be permitted unless such wells or holes are plugged in a manner approved by the Office of Miners' Health, Safety and Training.

19.4 Protection Of Workers.

(a) No person(s) shall enter a highwall miner opening for any reason without written approval from the Office of Miners' Health, Safety & Training. No person(s) shall enter a highwall miner opening for any reason unless that person(s) possesses a valid West Virginia underground coal miner certificate. The operator must submit a plan for approval that includes the following provisions:

(1) Written notification shall be submitted to the Office of Miners' Health, Safety & Training regional office. This notification shall include details of the specific problem and the reason(s) workers will have to enter the highwall miner opening.

(2) The operator shall submit a plan and must receive written approval from the Director or the Regional Supervisor of the Office of Miners' Health, Safety & Training, which will detail the precautions necessary to safely perform the duties involved.

(3) In order to safeguard workers, when anyone enters the highwall miner opening(s), all West Virginia underground mining laws and regulations shall apply.

(b) All travel ways and work areas shall be maintained in good condition. Safe means of access shall be provided to all work areas of the highwall miner system.

(c) Adequate guarding shall be provided on all moving equipment parts where workers could be injured by movement of these parts.

(d) All persons working around a highwall miner shall wear protective clothing including, but not limited to, safety helmets and safety-toed boots.

(e) Adequate illumination shall be provided when the highwall miner system is operated in darkness or low visibility conditions.

(f) A positive audible or visible warning system shall be installed and operated to warn persons that conveyor equipment is to be started.

(g) Unguarded conveyors with walkways shall be equipped with emergency stop devices approved by the Director.

(h) Good visibility shall be provided for the highwall miner operator to the launch area of the machine.

(i) Two-way communication shall be provided between workers on the launch area and the highwall miner operator.

(j) Partitions of coal (web & barrier pillars) between the highwall miner openings shall not be recovered by other methods of mining without the written approval of the Director of the Office of Miners' Health, Safety & Training.

(k) Trailing cables shall be adequately protected to prevent damage.

(l) Mine operators shall require all people handling energized portable trailing cables to wear approved and tested insulated workmen's gloves. All such protective equipment shall be furnished by the operator. Rated gloves used when handling energized portable trailing cables shall be electrically tested every thirty (30) days and a record of that test shall be kept for one (1) year and made available to a representative of the Director upon request.

(m) All steps, handrails, walkways and platforms on the highwall miner shall be maintained in a safe condition. Employees shall be instructed and required to use access steps located at the rear of the launch when the highwall miner is in the mining position near the highwall. Handrails shall be provided for all elevated platforms and walkways.

(n) Panic line/pull cords shall be installed and in place directly beside the unguarded conveyor belt (belly belt) at all times when the belt is running and the highwall miner cars are not in position above the belt acting as a guard. When panic line/pull cords are detached to facilitate adding or removing highwall miner cars, workers shall follow a procedure that does not expose them to working above the running unguarded conveyor belt.

19.5 Operation Of Highwall Miners.

(a) No person or persons, other than the highwall miner crew, shall be allowed on or around the highwall miner when in operation unless in the line of duty.

(b) The operator shall not leave the controls while the highwall miner is being operated. Before leaving the controls for any reason, the operator shall place controls in the neutral position and de-energize the controls to prevent accidental activation of the controls.

(c) No persons shall work under suspended tools, equipment or machinery. Where needed, tag lines shall be used to guide machinery into place.

(d) Persons shall keep clear of the coal conveyance system while in motion and shall not cross over or pass under the conveyance system, except where safe crossing facilities are provided. Persons shall keep clear of conveyance system sections being swung, lowered or loaded in position.

19.6 Methane And Oxygen

(a) Highwall mining shall not be conducted in the vicinity of highwall miner openings or auger holes emitting dangerous quantities of methane or oxygen deficient air, until the atmosphere has been rendered harmless.

(b) Internal combustion engines in the vicinity of highwall miner openings shall be stopped while the highwall miner entries are being inspected.

(c) No material or equipment shall be stored in highwall miner openings.

(d) All highwall mining operations shall have an approved and fully functional detector(s) capable of measuring oxygen deficiencies and methane levels on site. There shall be at least one (1) person qualified in the care and use of the approved detecting/measuring device(s). All tests for oxygen deficiency and methane will be conducted with approved detectors.

(e) If at any time unsafe methane levels or oxygen deficient air is detected, no further work shall be performed until the atmosphere has been made safe.

(f) When a highwall miner opening penetrates an abandoned mine or mined out area(s) of an underground mine, mining shall cease immediately and tests for methane and oxygen deficiency shall be made at the mouth of the hole by a qualified person. These tests shall be made using approved devices to determine if dangerous quantities of methane and/or oxygen deficient air are present or being emitted. If such is found, no further work shall be performed until the atmosphere is made safe.

(g) The highwall miner shall be equipped with a monitoring device that will alert the operator when methane levels reach concentrations of 1.0%, at which time the cutter head will be lowered and the machine shut down. All launch workers will be removed from the immediate area and a methane examination will be conducted at the drift opening. Methane levels will be tested at the drift opening and observed on the mining machine monitor. When the test at the drift opening cannot detect significant levels of methane and the mining machine monitor indicates that methane accumulation has dispersed, work may resume. In the event the miner is de-energized when the methane monitor detects 2.0% methane or a 1.0% reading continues for a sustained amount of time, all underground equipment will be de-energized and removed by hydraulic cylinders or other means outside the opening. The opening that was being mined will be abandoned at this time.

(h) All methane examinations will be recorded in the examination book maintained by the supervisor, along with necessary explanations. Methane monitors will be visually inspected prior to the start of each new entry. Methane monitors will be tested monthly, using manufacturers test apparatus.

19.7 Highwall Miner Cable Reels

(a) All cable reels shall be guarded in such a manner so as to prevent any person from coming in contact with any cables and/or moving parts.

(b) At no time shall persons position themselves in front of the cable reels on top of the system while the system is in operation except when the following guidelines are followed:

(i) The reels are being controlled from the top level with visual contact with all persons on the top deck.

(ii) If the cable guide malfunctions, efforts shall be made to start repairs as soon as possible.

(iii) All persons that are required to work in this area shall be made aware of the malfunction.

(iv) At no time shall any person hand guide cables onto the cable reels.

§56-3-36 20. General Provisions.

36 20.1. Horseplay - Horseplay, practical jokes, wrestling, fighting or other actions which threaten persons with personal injury, causing them to fear for their personal safety or causing damage resulting in interference with safe operations shall be prohibited.

36 20.2. Alcohol and drugs - Persons under the influence of alcohol or drugs shall not be permitted on a surface mine or attendant facility. An authorized representative of the director may cause any miner to be withdrawn from the mine and request the mine operator to search and/or test the miner for alcohol, drugs or drug paraphernalia.

36 20.3. Housekeeping - Paths, walkways, stairways, and roadways shall be kept free of obstructions. Structures and inside work areas shall be kept free of oil, coal spillage, litter, and coal dust accumulations.

36 20.4. Smoking - Smoking or open flames shall not be permitted in the following areas:

Within 50 feet of the area where explosives are being stored, handled, or used storage area;

Within 150 feet of flammable liquid storage areas;

Within 150 feet of liquefied and nonliquefied gas storage areas;

Within 150 feet of the proximity of auger holes;

Within 150 feet of highwall miner openings.

36 20.5. Compressed air or gases.

(a) Safety chains or suitable locking devices shall be used at connections to machines or high-pressured hose lines where a connection failure would create a hazard.

(b) Compressors and compressed-air receivers shall be equipped with automatic pressure relief valves, pressure gauges, and drain valves.

(c) All hoses exceeding one-half (1/2) inch inside diameter shall have a safety device at the surface of supply at the branch line to reduce pressure in case of hose failure.

36.20.6. No working alone - No person shall be assigned, or allowed, or be required to perform work alone in any area where hazardous conditions exist that would endanger his safety unless he can communicate with others, can be heard, or can be seen.

36 20.7. Stockpiles - Coal shall not be stockpiled at or near exposed or buried gas lines.

~~36~~ 20.8. Reclaiming hazards - No person shall be permitted to walk or stand immediately above a reclaiming area at or near a slurrage or storage pile where the reclaiming operations may expose him to a hazard.

20.9. Toilet facilities - Each operator of a surface mine shall provide at least one sanitary toilet in a location convenient to each surface work site. All sanitary toilets shall be regularly maintained in a clean and sanitary condition.

20.10. Drinking water - An adequate supply of potable water shall be provided for drinking purposes in each surface installation and at each surface worksite of the surface mine. Water transported to all work sites shall be carried, stored and otherwise protected in sanitary containers.

20.11. Persons entering a mine - Only authorized persons shall be permitted to enter a surface mine. The mine operator shall develop a plan to account for those authorized persons while at the surface mine. The plan shall be available to a representative of the Director upon request.

Comment/Response: "Plan to account for authorized persons". Need to define "authorized person". Will visitor logs at the guard posts be sufficient?. Numerous contractors, train crews, gas company employees, forest fire fighters, landowners, enforcement personnel, vendors, stray 4-wheelers and company employees enter the mine site on a daily basis. How do we secure the property boundaries to keep those folks who are not invited? What is the penalty?

~~§56-3-37~~ 21. Electricity.

~~37~~ 21.1. Performance of electrical work.

(a) No electrical work shall be performed on low-, medium-, or high-voltage distribution circuits or equipment, except by a qualified person or by a person trained to perform electrical work and to maintain electrical equipment under the direct supervision of a qualified person. Disconnecting devices shall be locked out and suitably tagged by the person who performs such work, except that in cases where locking out is not possible, such devices shall be open and suitably tagged by such person. They shall be removed only by the person who installed them or if such person is unavailable, by a qualified person authorized by the operator or his agent. Suitably tagged, as used in these sections, means that a sign such as, "Danger, Hands Off, Do Not Close, Men Working On Line", shall be attached to the locked switches. The signs or tags shall bear the name, date, and certification of the workman who installed the tag. Keys used to lock out switches shall be kept only on the person who is performing the work on the equipment and his immediate supervisor. Such locks shall be provided by the operator.

(b) All power circuits and electrical equipment shall be de-energized before work is performed on such circuits and equipment, except when necessary for troubleshooting or testing.

~~37~~ 21.2. Transformers.

(a) All surface transformers, unless of the construction which will eliminate shock hazard, or unless installed at least eight (8) feet above ground, shall be enclosed in a house or surrounded by a fence at least six (6) feet high. If the enclosure is of metal, it shall be grounded effectively, the gate or door to the enclosure shall be kept locked at all times, unless authorized persons are present.

(b) Transformers shall be provided with adequate overload protection.

(c) "Danger - High Voltage" signs with voltage indicated shall be posted conspicuously at all transformer enclosures, high potential switch boards, and other high potential installations.

(d) Ground fields shall be installed and maintained at a resistance not to exceed five (5) ohms.

~~37~~ 21.3. Electrical equipment generally.

(a) Capacitors used for power factor connections shall have suitable drain off resistors or other means to protect workmen against electrical shock following removal of power.

(b) Dry insulated platforms of rubber or other suitable nonconductive material shall be kept in place at each switchboard and at stationary machinery where shock hazards exists.

(c) Reverse current protection shall be provided at storage battery charging stations to prevent the storage batteries from energizing the power circuit in the event of power failure.

(d) All electric conductors shall be sufficient in size and have adequate current carrying capacity and be of such construction that a rise in temperature resulting from normal operation will not damage the insulating materials. In no case will the requirements be less than set forth in the current National Electric Code.

(e) All electrical connections or splices and conductors shall be mechanically and electrically efficient and suitable connectors shall be used. All electric connections or splices and insulating wires shall be reinsulated at least to the same degree of protection as the remainder of the wire. Splices made shall provide continuity of all components.

(f) All power wires, except trailing cables on mobile equipment, specially designed cables conducting high voltage power shall be supported on well installed insulators and shall not contact different potential passes within eighteen (18) inches of each other, such cables shall be insulated to the potential of the highest voltage wire or cable.

(g) All electrical equipment shall be provided with switches or controls that are safety designed, constructed, and installed. Power cable, trailing cable or conductor couplings or connections cannot be connected or disconnected while under load.

(h) Single phase loads such as transformer primaries shall be connected phase to phase.

37 21.4. Testing maintenance and repair of electrical equipment.

(a) All electrical equipment, except circuit breakers, shall be examined daily, by a competent person to assure safe operating condition. All electrical equipment shall be examined monthly, tested and properly maintained by a certified electrician. When a potential dangerous condition is found on electrical equipment, such equipment shall be removed from service until the condition is corrected by a certified electrician. A record of such examination and the action taken when the potential dangerous condition is found shall be kept and made available to an authorized representative of the Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training and to the miners at such mine.

(b) Circuit breakers and their auxiliary devices shall be tested and examined at least once each month by a qualified person and a record of such examination shall be kept and made available to an authorized representative of the director and to the miners at such mine. Circuit breaker tests shall include:

(1) Breaking continuity of the ground check conductor where ground check monitoring is used.

(2) Actuating all of the auxiliary protective relays, and;

(3) Visual observation of all components of the circuit breaker and its auxiliary devices.

Such repairs or adjustments as are indicated by such tests and examination shall be carried out immediately.

37 21.5. Circuit breakers.

(a) Automatic circuit breaking devices or fuses of the correct type and capacity shall be installed so as to protect all electrical equipment and circuits against short circuit and overload. Three (3) phase motors on electrical equipment shall be provided with overload protection that will de-energize all three (3) phases in the event that any phase is overloaded. As used in this section, adequate current interrupting capacity requires that the fuse or circuit breaker is capable of interrupting the maximum short circuit current that the circuit may conduct without destruction to the device.

(b) Electric equipment shall be provided with devices that will permit the equipment to be de-energized quickly in the event of an emergency.

(c) One (1) circuit breaker may be used to protect two (2) or more branch circuits if the circuit breaker is adjusted to afford over current protection for the smallest conductor.

(d) When not in use, power circuits shall be de-energized on idle days and idle shifts except that rectifiers and transformers may remain energized.

(e) Power circuits serving three (3) phase alternating current equipment serving portable or mobile equipment shall be protected by suitable circuit breakers of adequate interrupting capacities which are properly tested and maintained as prescribed by the director. Such breakers shall be equipped with devices to provide protection against under voltage, grounded phase, short circuit and over current.

(f) Disconnecting devices shall be installed at the beginning of branch lines in high voltage circuits and equipped or designed in such a manner that it can be determined by visual observation that the circuit is de-energized when the switches are open.

(g) Circuit breakers and disconnecting switches shall be marked for identification.

~~37~~ 21.6. Cables.

(a) Cables shall enter metal frames of motors, splice boxes and electrical compartments only through proper fittings. When insulated wire, other than cables pass through metal frames, the hole shall be substantially bushed with insulated bushings. Cables and power wires, including, but not limited to, telephone communication and control wires, shall be insulated adequately and fully protected.

(b) Trailing cables shall be clamped to machines in a manner to protect the cables from damage and to prevent strain on the electrical connections. No cable will be hung in a manner which will damage the insulation or conductors.

(c) Trailing cables shall be adequately protected to prevent damage by mobile equipment.

(d) Short circuit protection for trailing cables shall be provided by an automatic circuit breaker or other no less effective device, approved by the director, of adequate current interrupting capacity in each ungrounded conductor. Disconnecting devices used to disconnect power from trailing cables shall be plainly marked and identified and such devices shall be equipped or designed in such a manner that it can be determined by visual observation that the power is disconnected and shall be labeled to show which unit they control.

(e) Cable couplers shall be constructed so that the ground check continuity conductor shall be broken first and the ground conductor shall be broken last when the coupler is being uncoupled.

(f) When two (2) or more trailing cables junction to the same distribution center, means shall be provided to assure against connecting the trailing cable to the wrong size circuit breaker.

(g) One temporary splice may be made in any portable trailing cable. Such trailing cable may only be used for the next twenty-four (24) hour period. Temporary splices in trailing cables shall be made in a workmanlike manner and shall be mechanically strong and well insulated. Trailing cables or hand cables which have exposed wires or which have splices that heat or spark under load shall not be used. As used in this section, the term splice means a mechanical joining of one (1) or more conductors that have been severed.

Comment/Response: Need a complete definition of "temporary splice". What type documentation will be required to determine the (24) hour period?

(h) When permanent splices in trailing cables are made, they shall be:

- (1) Mechanically strong with adequate electrical conductivity and flexibility;
- (2) Effectively insulated and sealed so as to exclude moisture;
- (3) Vulcanized or otherwise treated with suitable materials to provide flame-resistant qualities and good bonding to the outer jacket, and;
- (4) Made in accordance with the manufacturers specifications.

(i) Trailing cables for medium voltage circuits shall include grounding conductors, a ground check conductor, and grounded metallic shields around each power conductor or a grounded metallic shield over the assembly, except that on equipment employing cable reels, cables without shields may be used if insulation is rated two thousand (2,000) volts or more.

~~37~~ 21.7. Grounding.

(a) all metallic shields, armors and conduits enclosing power conductors will be electrically continuous throughout and shall be grounded by method approved by an authorized electrical representative of the director. Where grounding wires are used to ground metallic shields, armors, conduits, frames, casings and other metallic enclosures, such grounding wire will be approved if:

- (1) Where the power conductor used is #6 A.W.G. or larger, the cross sectional area of the grounding wire is at least one-half (1/2) the cross sectional area of the power conductor.
- (2) Where the power conductor used is less than #6 A.W.G., the cross sectional area of the grounding wire is equal to the cross sectional area of the power conductor.

(b) The attachment of grounding wires to other grounded power conductors will be approved if separate clamps, suitable for such purpose, are used and installed to provide a solid connection.

(c) Metallic frame, casing, and other enclosures of electrical equipment that can become alive through failure of insulation or by contact with energized parts shall be grounded, and shall have a ground monitoring system, to monitor continuously the grounding circuit, to assure continuity, such

ground check circuit shall cause the circuit breaker to open when either the ground or pilot check wire is broken, or other not less effective device approved by the director or his authorized electrical representative, to assure such continuity, except a temporary waiver may be permitted by the Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training, on a mine to mine basis if he determines that such equipment is not available.

(d) In instances where single phase one hundred ten (110)-two hundred twenty (220) volt circuits are used to feed electrical equipment, the only method of grounding that will be approved is the connection of all metallic frames, casings or other enclosures of such equipment to a separate grounding conductor which established a continuous connection to a grounded center tap of the transformer.

(e) Where batteries are being charged without removing them from mobile equipment, or are sitting on wooden blocks, the frames of the machine or battery case shall be grounded to the grounded frame of the charger to prevent the machine from becoming alive through failure of insulation in the charger. All ground conductor connections shall be clamped or bolted connections.

(f) All buildings and structures shall be earth grounded if they are constructed of metal. Also, any building or structures which could become alive with electrical energy shall be effectively grounded.

(g) Guy wires from poles supporting high voltage power lines shall be securely connected to the system grounding medium or shall be provided with insulators rated at the highest voltage installed near the pole end.

(h) At preparation plants, shop areas, surface mines, and all other surface areas 120/240 volt AC circuits used to power electrical devices used in wet locations shall be protected with ground fault circuit interrupting devices.

37 21.8. Energized lines generally.

(a) All guy wires shall be marked or flagged when equipment is working in the area.

(b) Energized power lines crossing an access road or work area shall be identified by warning signs visible from each direction. Warning signs shall include height of lines for clearance and made of reflective material. In no event shall any high voltage power line be installed less than fifteen (15) feet above ground, walkways, or working areas.

(c) All equipment near energized power lines with the following voltages shall maintain the following clearances: one hundred (100) to sixty-nine thousand (69,000) - ten (10) feet; sixty-nine thousand (69,000) to one hundred fourteen thousand (114,000) - twelve (12) feet; one hundred fifteen thousand (115,000) to two hundred twenty-nine thousand (229,000) - fifteen (15) feet; two hundred thirty thousand (230,000) to three hundred forty-four thousand (344,000) - twenty (20) feet; three hundred forty-five thousand (345,000) to four hundred ninety-nine thousand (499,000) - twenty-five (25) feet; five hundred thousand (500,000) or more - thirty-five (35) feet.

(d) All personnel, except those directly involved in the operation, shall stay clear of the equipment working near energized lines.

(e) If equipment comes in contact with an energized line, the operator shall stay in the equipment until notified by a certified electrician or foreman that the line is de-energized.

(f) All electrical wiring and equipment installed shall meet the requirements of the current National Electrical Code.

37 21.9. High voltage.

(a) High voltage lines on the surface shall be de-energized, locked out, tagged out, and grounded before work is performed on them, except that repairs may be permitted, in the case of energized surface high voltage lines, if such repairs are made by a qualified person in accordance with the procedures and safeguards, including, but not limited to, a requirement that the operator of such mine provide tests, and maintain protective devices in making such repairs. No work shall be performed on any high voltage line on the surface which is supported by any pole or structure which also supports other high voltage lines until all lines supported on that pole are de-energized and grounded.

(b) No high voltage lines shall be regarded as de-energized for the purpose of performing work on it until it has been determined by a qualified person that such high voltage line has been de-energized and grounded. Such qualified person shall, by visual observation, determine that the connecting devices on the high voltage circuit are in open position and insure that each ungrounded conductor of the high voltage circuit upon which work is to be done is properly connected to the system grounding medium.

(c) An energized high voltage line may be repaired only when the operator has determined that such repairs cannot be scheduled during period when the power circuit could be properly de-energized and grounded. Such repairs will be performed on power circuits with a phase to phase nominal voltage no greater than fifteen thousand (15,000) volts. The weather conditions shall be noted so that it would not interfere with such repairs or expose those persons assigned to such work to an imminent danger. The operator shall designate a person qualified to perform such work as the person responsible for carrying out such repairs. In order to insure protection for himself and other interested persons assigned to perform such repairs from the hazards of said repairs, he must prepare and file with the operator; (1) a general description of the nature and location of the damage or defect to be repaired; (2) the general plan to be followed in making of such repairs; (3) a statement that a briefing of all qualified persons assigned to make such repairs was conducted informing them of the general plan, their individual assignments, and the dangers inherent in such assignments; (4) a list of proper protective equipment and clothing that will be provided and such other information as the person designated by the operator feels necessary to describe properly the means or methods to be employed in such repairs. All statements obtained by the operator shall be recorded and contain a notation of the time, date, location and general nature of the repairs.

(d) When two (2) or more persons are working on an energized high voltage surface line simultaneously and anyone of them is within reach of another, such persons shall not be allowed to work on different phases or equipment with different potentials.

(e) All persons performing work on energized surface high voltage lines shall wear protective rubber lineman's gloves, sleeves, and climber guards if climbers are worn. Protective rubber gloves shall not be worn wrong side out or without protective leather gloves. Protective devices worn by a person assigned to perform work on high voltage surface lines shall be worn continuously from the time he leaves the ground until he returns to the ground and if such devices are employed for extended periods, such persons shall visually inspect the equipment assigned him for defects before each use and in no case, less than twice each day.

(f) All rubber protective equipment used for work on energized high voltage surface lines shall be electrically tested by the operator in accordance with ASTM Standards, part 28 published February, 1968.

(g) Disconnecting or cutout switches on energized high voltage surface lines shall be operated only with insulated sticks, fuse tongs or pullers which are adequately insulated and maintained to protect the operator from the voltage to which he is exposed. When such switches are operated from the ground, the person operating such devices shall wear protective rubber gloves.

(h) No new additional circuits may be tied to a high voltage surface line when such line is energized.

(i) Solely for purposes of grounding ungrounded high voltage power systems grounded messenger wires used to suspend the cable of such system may be used as a grounding medium.

(j) All high voltage circuits supplying portable, mobile or stationary equipment shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the source transformer and a grounding circuit originating at the grounded side of the grounding resistor shall extend along the power conductors and serve as a grounding conductor for the frames which receives power from that circuit. The grounding resistor shall be of the proper ohmic value to limit the voltage drop in the grounding circuit external to the resistor to not more than one hundred (100) volts under fault conditions, the grounding resistor shall be rated for maximum volt current continuously and insulated from ground for a voltage equal to the phase to phase voltage of the system.

(k) High voltage resistant grounded system serving portable or mobile equipment shall include a fail safe ground check circuit to monitor continuously the grounding circuit to assure continuity and the fail safe ground check circuit shall cause the circuit breaker to open when either the ground or pilot check wire is broken or other no less effective device approved by the director or his authorized representatives to assure such continuity.

(l) High voltage cables used in resistant grounded systems shall be equipped with metallic shields around each power conductor with one (1) or more ground conductors having a total cross sectional area of not less than one-half (1/2) the power conductor and with an insulated internal or

external conductor not smaller than #10 A.W.G. for the ground continuity check circuit.

37 21.10. Movement of electrical equipment.

(a) Power centers, portable transformers, cable couplings and enclosures shall be de-energized before they are moved from one (1) location to another. Except that when equipment powered by source other than such centers or transformers is not available the director may permit such centers or transformers to be moved while energized if he determines that such equivalent or greater hazard may otherwise be created and if they are moved under the supervision of a qualified person, and if such centers and transformers are examined prior to such movement by such person and found to be grounded by methods approved by an authorized representative of the director and otherwise protected from hazard to the miner. A record shall be kept of such examination.

(b) High voltage cables other than trailing cables shall not be moved or handled at any time while energized as permitted under this section.

(c) ~~Energized high voltage trailing cables may be moved only by a qualified person and the operator of such mines shall require that such person wear approved and tested insulated workmen's gloves.~~ Mine operators shall require all people handling energized portable trailing cables to wear approved and tested insulated workmen's gloves. All such protective equipment shall be furnished by the operator. Rated gloves used when handling energized portable trailing cables shall be electrically tested every thirty (30) days and a record of that test shall be kept for one (1) year and made available to a representative of the Director upon request. If straps or hooks are used, those straps and hooks shall be non-conductive and designed for that purpose.

37 21.11. Other electrical apparatus or areas.

(a) Ladders for electrical work shall be of nonmetal type.

(b) No electrical machinery or apparatus shall have unguarded exposed energized parts.

(c) Lighting plants shall be located so as not to obstruct or be a safety or health hazard to any part of the mining operation or miners.

(d) Employees performing work that requires them to come in contact with electrical equipment involving shock hazards shall be provided with suitable insulating gloves. Suitable insulation shall be of approved type that will protect such person from voltage to which he is exposed. All such protective equipment shall be furnished by the operator.

(e) Rooms in which circuit breakers or controls are installed shall have two (2) separate and distinct travelable passageways, designated as escapeways.

(f) Open flame in or about surface structures shall be restricted to locations where it will not cause fire or an explosion.

(g) All lights with less than eight (8) feet overhead clearance shall be guarded and the lamps be installed in weatherproof sockets. Lamps installed in a hazardous area must be of substantial construction and fitted with a glass enclosure.

(h) A ten (10) pound fire extinguisher shall be provided for each permanent electrical installation.

§56-3-38 22. Hand-Held Electric Drills and Rotating Tools; ~~Trailing Cables~~.

38 22.1. Electric drills and other electrically operated rotating tools intended to be held in the hand shall have the electric switch constructed so as to break the circuit when the hand releases the switch or shall be equipped with friction or safety clutches.

§56-3-39 23. Installation of Lighting.

39 23.1. Electric lights or other approved methods of lighting shall be installed so that they do not come in contact with combustible materials, and the wires shall be supported by suitable insulators and fastened securely to the power conductors.

§56-3-40 24. Compressed Gases and Welding.

40 24.1. Handling and use of welding or cutting equipment generally.

(a) The clothing of any person using any welding or cutting equipment in or about a surface mine shall be reasonably free of petroleum products. When handling oxygen cylinders or apparatus the use of oily hands or gloves is prohibited.

(b) Compressed gases shall not be used under direct pressure from tanks or cylinders but must be used under reduced pressures not exceeding that recommended by the manufacturers.

(c) At no time shall compressed air be directed toward a person when in use.

(d) A suitable wrench designed for compressed tanks shall be in the possession of the person authorized to use the equipment.

(e) Oxygen and gas cylinders and their contents shall be used solely for their intended purposes.

(f) Only an approved type spark-lighter shall be used for lighting torches.

(g) All welding and cutting equipment shall be continuously maintained in a safe condition.

40 24.2. Storage of compressed gas cylinders.

(a) Cylinders shall be securely stored in an upright position with valve protection caps hand tight. The storage area shall be well ventilated, protected and at least twenty (20) feet from highly combustible materials such as oil or other flammables.

(b) Signs at storage areas of cylinders shall be conspicuously posted, "Danger No Smoking, Matches or Open Flame".

(c) When storing oxygen cylinders and acetylene or other fuel gas cylinders inside buildings, a minimum distance of twenty (20) feet or a noncombustible barrier at least five (5) feet high having a fire resistance rating of at least one-half (1/2) hour shall be maintained between the oxygen cylinders and other fuel gas cylinders.

40 24.3. Transportation of compressed gas cylinders.

~~(a) When tanks and cylinders are not used and they are being transported, valve protection caps shall be placed on all tanks or cylinders. Oxygen tanks, gas tanks, or cylinders shall not be transported with the hoses or gauges attached.~~

~~(b)~~ (a) When transporting cylinders, they shall be securely mounted with regulators removed, cylinder valves closed and protective valve caps replaced except in conformance with the provisions of 36 CSR 27-11.1(a) through (h).

~~(c)~~ (b) Gas cylinders shall not be transported on vehicles used to transport employees unless separate approved compartments are provided.

40 24.4. Welding preparations.

(a) Person or persons assigned to use and work with welding and cutting tools shall be properly instructed of their uses and fully understand the danger of their misuse.

(b) All persons welding, cutting, heating, brazing or soldering shall be provided with goggles or shields, gloves, safe type spark-lighter and proper torch tip cleaner.

(c) Prior to welding, cutting, heating, brazing or soldering in areas likely to contain methane, an examination shall be made by a qualified person with an approved device. Examinations for methane shall be made immediately before and periodically during welding, cutting, heating, brazing or soldering and such work shall not commence or continue in air which contains one percent (1%) or more methane.

(d) Welding operations shall be shielded when necessary and the area shall be well ventilated.

(e) Fire watchers shall be used whenever welding, cutting, heating, brazing or soldering is performed at locations where a fire hazard exists.

(f) Adequate fire protection shall be provided at the location where welding, cutting, heating, brazing and soldering is performed.

~~40~~ 24.5. Acetylene welding.

(a) Only approved apparatus such as torches, regulators, pressure reducing valves, hoses, back flow check valves and gas cylinders shall be used.

(b) Back flow check valves shall be attached to the exhaust side of a regulator before using.

(c) Repairs involving the pressure system of compressors, receivers, or compressed-air-powered equipment shall be prohibited until the pressure has been relieved from the part of the system to be repaired.

(d) Gas cylinders shall be protected from contacting sparks, hot slag or flame during welding, cutting, heating, brazing or soldering.

(e) Regulators shall be adequately attached to the cylinders before using their contents.

(f) The cylinder valve shall be opened partially for an instant, then closed before connecting a regulator. Such person performing said act shall stand to one (1) side (not in front) of the outlet when opening the cylinder valve.

(g) When removing a regulator from a cylinder bottle valve, such valve shall be closed and the gas released from the regulator.

(h) Empty cylinders shall be marked as such and removed from the work area immediately.

(i) Oxygen and acetylene tanks or cylinders or compressed gases shall be protected from power lines or energized electrical machinery or equipment. These tanks or cylinders shall be kept away from the place where the cutting is being done in order to prevent damage or accident and to prevent heat from affecting such tanks or cylinders.

~~40~~ 24.6. Electrical welding.

(a) All connections at the welding machine shall be checked before starting such operations.

(b) The ground lead shall be adequately attached to the work.

(c) Magnetic work clamps shall be free of adherent metal particles or spattex on contact surfaces.

(d) Coiled welding cable shall be adequately separated to avoid serious overheating and damage to cable insulation.

- (e) The welding machine frame shall be adequately grounded.
- (f) The welding machine shall be free of leaks, cooling water, shielding gas and engine fuel.
- (g) Proper switches shall be provided for de-energizing the welding machine.
- (h) Electrode holders shall be located so they do not make electrical contact with persons, conducting objects, fuel or compressed gas cylinders. Energized electrode holders may be laid down or placed only in approved nonconductive trays or holders.
- (i) There shall be splice-free cables within ten (10) feet of the electrode holder.
- (j) The welding cable shall not coil or loop around parts of the welder's body.
- (k) When welding has ceased for any substantial period of time, all electrodes shall be removed from holders. Holders shall be located so that accidental contact cannot occur.
- (l) Where work permits, arc welders shall be enclosed by individual booths or non-combustible screens painted with a finish of low reflectivity such as zinc oxide or lamp black.

40 24.7. Safety Hazards.

- (a) Welding, cutting, and burning shall be prohibited in dusty areas.
- (b) After welding operations, the area where metal particles could come into contact with other workers, shall be posted with signs to provide warning.
- (c) Welders shall report any equipment defect or safety hazard to their supervisor and discontinue welding until safety has been assured.
- (d) When welding machines are used to provide an external power source, the welding machine's 120/240 volts AC receptacles shall be provided with ground fault circuit interrupting protection.

40 24.8. Maintenance and repairs.

- (a) Cylinders, valves, couplings, regulators, hoses and apparatus shall be kept free from oil, dirt, greasy substances, and maintained in good condition.
- (b) Test for leaks on hoses, valves, or gauges shall be made with a soft brush and soapy water or soap suds.
- (c) Welding machines, electrodes, and cables shall be examined weekly for wear and/or damage.

§56-3-41 25. When Respiratory Equipment to be Worn; Control of Dust.

41 25.1. Men exposed for short periods to gas, dust, fume, and mist inhalation hazards shall wear permissible respiratory equipment. Dust shall be controlled by the use of permissible dust collectors or other approved methods.

§56-3-42 26 Nontitled.

42 26.1.

(a) Immediately prior to the beginning of each working shift, all equipment except licensed vehicles subject to state highway inspection requirements shall be examined by the equipment operator or a mechanic if designated by the foreman in charge of the operation daily for safety defects. The person performing such examination shall record his findings in ink or indelible pencil on a form approved by the director; such form shall be given to the mine foreman or his assistant within four (4) hours after the beginning of the start of the working shift. The person performing the above examination shall sign the report form and the foreman receiving such form, shall initial upon receipt. A record of all above such examinations shall be maintained for thirty (30) days remain with the equipment for thirty (30) days and made available to an authorized representative of the director and to the miners at the mine.

Comment/Response: Record of preshifts to be kept with equipment for 30 days. This exposes the records to loss or damage. It also leads to inadequate pre-shift exams due to operators copying the previous shift's inspection.

(b) Immediately prior to the beginning of each working shift, equipment operated by independent contractors ~~in the removal of coal and overburden~~ on a surface mine shall be examined by the equipment operator for safety defects. The person performing such examination shall record his findings in ink or indelible pencil on a form approved by the Director; such form shall be signed by the person performing the examination and such form shall remain with the vehicle for thirty (30) days and upon request be made available to an authorized representative of the Director.

(c) Imminent danger equipment defects shall be reported immediately to the mine foreman, tagged out and corrected before the equipment is put into operation. The mine foreman shall record the defect in the pre-shift book.

Comment/Response: Defects recorded in the pre-shift book. This places a cumbersome burden on the mine foreman to list these items in the book. The current law requires equipment to be removed from service.

(d) All mobile equipment shall be operated and maintained according to the manufacturers instructions.

42 26.2. Operation of shovel, draglines, tractors, backhoes, loaders, etc.

(a) No person(s) shall enter the work area of any mobile equipment until first making positive contact either audible or visual with the equipment operator(s). Equipment operators shall cease operating their equipment when any person is within such proximity as to be endangered.

Comment/Response: Is this language concerning people on the ground? If not, how do we address a normal loading cycle? Will the truck driver be required to make audible or visual contact with other equipment operators? What about trucks passing on the haul roads?

(b) At startup or anytime mobile equipment is stopped, other than during the normal work cycle, Operators of shovels, draglines, and backhoes shall sound a signal distinguishable from the surrounding noise level such as a whistle, bell, horn or other approved device, before moving forward or backward, and all persons not in the clear shall respond immediately.

(c) Equipment operators shall not leave their cabs without lowering all raised equipment to the ground.

(d) When the equipment operator is present, men shall notify him before getting on or off his equipment.

(e) Persons shall not be permitted in the immediate vicinity of shovels, draglines, and backhoes unless in the line of duty.

(f) Walkways and platforms on shovels, draglines and backhoes shall be maintained in a safe condition and shall be equipped with safe handrails, toe boards, walkways and platforms.

(g) Equipment that revolves in a horizontal arc on a turntable shall have a minimum clearance of four (4) feet from the highwall or other obstructions.

(h) The operator of shovels, draglines, and backhoes shall have a general knowledge of the location of his oiler at all times.

(i) Operators of shovels and draglines shall not leave their cabs to wet the digging brake or dog, unless the master clutch is in the "off" position. Operators of shovels and draglines shall have visual contact, when possible, with the person assigned to setting the digging brake or dog.

(j) Operators shall not leave the cab of the shovel, dragline or crane without placing the controls into the "Off" position. If the power should fail, the controls shall be placed in the "Off" position.

(k) All ropes shall be securely attached to the drum and the dipper by at least four (4) suitable wire rope clips or properly wedged. Drums shall have at least three (3) wraps of cable on at all times.

(1) Riding a dipper or bucket shall be prohibited.

42: 26.3. Maintenance and repairs.

(a) All safety equipment on all machinery shall be maintained in a safe working condition.

(b) Mobile and stationary equipment shall be maintained in safe operating condition. ~~and~~ Equipment in unsafe condition shall be removed from service immediately.

(c) Good housekeeping shall be practiced on all equipment. All heavy duty equipment shall be cleaned as necessary to maintain the equipment reasonably free of combustible substances.

(d) Men shall not work on or from a piece of mobile equipment in a raised position until it has been securely blocked in place.

(e) No work shall be performed under machinery or equipment that has been raised until such machinery or equipment has been securely blocked in place.

(f) While greasing or doing repair work on a boom of a shovel, dragline, or backhoe, the boom shall be lowered to a position whereby the work can be done from the ground or the workmen shall use safety belts. This does not apply on shovels, draglines, or backhoes that are equipped with safe handrails or ladders.

(g) Dippers of buckets or shovels, draglines and backhoes shall be lowered for repairs.

(h) Repairs or maintenance shall not be performed on equipment until the power is off and the equipment is blocked against motion, except where the movement of the machine or parts is necessary to make adjustment.

42 26.4. Warning devices, lights, brakes.

(a) ~~Dump trucks used to haul coal or other material~~ All mobile equipment shall be equipped with an approved automatic warning device which shall give a clearly distinguishable alarm when such equipment is in reverse.

(b) Equipment such as fork lifts, front-end loaders, tractors, dozers, and graders shall be provided with an approved audible warning device.

(c) Lights shall be provided on both ends of equipment when equipment is being worked other than during daylight hours. Also lights on both ends of equipment shall be provided during other existing conditions such as fog, etc.

(d) ~~Power driven~~ All mobile equipment shall be equipped with adequate brakes. ~~All trucks and front-end loaders~~ mobile equipment shall be equipped with adequate parking brakes.

42 26.5. Dump trucks and dumping.

(a) Dump bodies of trucks shall be properly blocked when raised for any purpose except dumping of load.

(b) No person shall be permitted in or on the cargo space of dump trucks while being loaded with coal or other materials.

(c) No person shall be allowed in the cab of a dump truck while the truck is being loaded with power shovel, front-end loader, or backhoe unless the cab is shielded.

(d) Truck cabs where rear vision is impaired shall be equipped with adequate rear view mirrors on both sides.

(e) The dipper of a loading shovel shall be swung over the body of the truck and not the cab.

42 26.6. Dippers.

(a) Riding on a dipper or bucket shall be prohibited.

(b) Workmen shall keep out from under suspended dippers at all times.

(c) Energized trailing cables on shovels shall not be moved with the shovel dipper unless non conductive cable slings ~~or sleds~~ are used.

(d) Operators shall not swing a dipper or bucket over passing haulage equipment.

42 26.7. Equipment generally.

(a) No equipment or machinery shall be altered or modified in a manner that reduces the level of safety.

(b) Road maintenance equipment such as graders or other equipment normally used shall be equipped with roof mounted approved flashing lights.

(c) All equipment, when equipped with a safety bar for automatic transmission, shall be set in locked position before the operator leaves the cab. Operators of dozers that are equipped with standard transmission, shall lock the park brake, place the transmission in a neutral position, and lock the clutch in before leaving the cab.

(d) All steps, ~~and~~ handrails, walkways and platforms on surface mining equipment shall be maintained in a safe condition.

(e) Electrically powered mobile equipment shall not be left unattended unless the master switch is in the "Off" position. All operating controls shall be placed in neutral position, and the brakes set or other equivalent precautions taken against rolling.

(f) A tow bar or other approved device shall be used for towing equipment. A safety chain shall be used in conjunction with a tow bar.

(g) All exhaust tail pieces shall be positioned and properly maintained to prevent carbon monoxide and other toxic fumes from entering an operator's compartment.

(h) The operator of a grader shall face in the direction of travel except during grading operations in a local area.

(j) Emergency stop switches shall be provided, and maintained, to quickly de-energize electrically powered mobile equipment engines in the event of an emergency. The switches shall be located in the operator's cab and also at a location accessible from ground level.

(k) Electrical compartments in use on electrically powered mobile equipment shall be maintained free of dust, water, and oil accumulations. Electrical compartment panel doors shall be secured in a manner to prohibit unauthorized access.

Comment/Response: Who defines who is authorized to access the electrical compartments? Can we allow a truck driver access to a door with switches?

(l) Wheel covers (hubcaps) shall be provided for electric wheel motors, shall be maintained in good condition, and shall be adequately secured.

Comment/Response: Does a bungee cord provide for "adequately secured"? Can a cover have a hole in it? How big of a hole? Can it be cracked?

42 26.8. Glass, and doors and mirrors.

(a) Cab windows of glass on equipment shall be safety glass or equivalent material with good visibility, in good condition, not broken or cracked to such extent that it can be felt, and kept clean.

(b) When required by the director, all mobile equipment shall be provided with windshield wipers and such wipers shall be maintained in good operating condition.

(c) All doors on mobile equipment shall be maintained in good operating condition.

(d) Adequate mirrors shall be maintained on all mobile equipment.

Comment/Response: Define "adequate mirrors"?

42 26.9. Guards.

(a) Fan blades, shafts, gears, flywheels, coupling, and similar exposed moving machine parts which may be contacted by persons shall be adequately guarded.

(b) Guards installed on equipment to prevent accidental contact with moving parts shall:

(1) Be of substantial construction;

(2) Not have openings large enough to admit a person's hand;

(3) Be firmly bolted or otherwise installed in stationary position; and

(4) Be of sufficient dimension to exclude the possibility of bodily contact while in motion.

42 26.10. Operation of mobile equipment.

(a) Mobile equipment operators shall have full control of the equipment while in motion and shall operate such mobile equipment safely.

(b) The type of equipment and posted operating speeds shall be prudent and consistent with conditions of roadways, grades, clearance, visibility and traffic.

(c) All mobile equipment shall be completely stopped before a person gets on or off.

(d) No person other than the operator shall be permitted to ride in or on equipment unless in line of duty, and only then when adequate safe seating facilities are provided.

(e) Cabs of mobile equipment shall be kept free of extraneous materials and adequately ventilated by mechanical means.

Comment/Response: Define mechanical means? Air conditioning or electric fans?

(f) When necessary to protect the operator of the equipment, all rubber tired or crawler mounted self-propelled scrapers, front-end loaders, dozers, graders, and tractors that are used on surface coal mines shall be provided with substantial falling object protective structures.

(g) Equipment shall be operated only by persons trained in the use of and authorized to operate such equipment.

(h) Operators of all equipment shall keep a reasonable safe distance from the edge of all vertical or abrupt excavations or fills.

42 26.11. Loads.

- (a) Equipment which is to be hauled shall be secured.
- (b) Any load extending more than four (4) feet beyond the rear of the vehicle body shall be marked clearly with a red flag.
- (c) Dump trucks shall be trimmed properly when they have been loaded higher than the confines of their cargo space.

42 26.12. Track type dozers - track type dozers shall meet the following standards:

- (a) Adequate fan blade guards.
- (b) Track brakes shall be working properly.
- (c) Steering clutches shall be in operating condition.
- (d) Portable fire extinguisher of at least five (5) pounds.
- (e) All floor boards shall be kept secured in place.
- (f) Safety bar lever for automatic transmission shall be in working condition.
- (g) Approved warning device which the operator can operate manually.
- (h) Cab protection when the dozer is being operated near the highwall or where there is a hazard from falling material.

42 26.13. Front-end loaders - rubber tire front-end loaders shall meet the following standards.

- (a) Portable fire extinguishers, of at least five (5) pounds.
- (b) Fan blade guards.
- (c) Adequate lights.
- (d) Approved warning devices.
- (e) If loader is provided with a windshield type cab, the windshield shall be of safety type glass, or the equivalent with good visibility and shall be equipped with windshield wipers.
- (f) Steering apparatus shall be functioning properly.
- (g) Adequate foot brakes - each individual wheel brake shall be working properly.

(h) The parking brake shall have capability equivalent to hold the vehicles stationary on ~~the a~~ twelve percent (12%) ~~dry swept concrete~~ grade under all conditions.

(i) The service braking system using stored energy shall be equipped with a warning device that activates when the system energy drops below fifty percent (50%) of the manufacturer's specified minimum operating energy level.

42 26.14. Machinery.

(a) All overhead belts shall be adequately guarded if the whipping action from a broken belt could be hazardous to a person below, or if within seven (7) feet of a person's work area or where persons may pass.

(b) Belt conveyors in locations where fire would create a hazard to personnel shall be provided with switches to stop the drive pulley automatically in the event of excessive slippage.

(c) Unguarded conveyor belt walkways, less than five (5) feet in width, shall be equipped with emergency stop switches or pull cord along their entire length.

42 26.15. Hand-held tools, power tools and safety devices.

(a) Conditions of tools - all tools, power tools and similar equipment shall be maintained in a safe condition.

(b) Hand-held power tools shall be equipped with controls requiring constant hand or finger pressure to operate the tools or shall be equipped with friction or other equivalent safety device.

(c) Employers shall not issue or permit the use of unsafe hand tools.

(d) Adjustable, pipe, end and socket wrenches shall not be used when jaws are sprung to the point that slippage occurs.

(e) Impact tools such as drift pins, wedges, and chisels, shall be kept free of mushroomed heads.

(f) The wooden handles of tools shall be kept tight and free of splinters or cracks and shall be kept tight in the tool.

(g) Electric power operated tools shall be approved double-insulated or grounded type.

(h) Only proper hoisting equipment shall be used for hoisting or lowering tools. The use of hoses or electric cords for such purpose is prohibited.

(i) Pneumatic power tools shall be secured to the hose by some positive means to prevent the tools from becoming accidentally disconnected.

(j) Safety clips or retainers shall be securely installed and maintained on pneumatic impact (percussion) tools.

(k) The manufacturer's safe operating pressure for hoses, pipes, valves, filters, and other fittings shall not be exceeded.

(l) All fuel powered tool engines shall cease operations while being refueled, serviced, or maintained.

(m) When fuel powered tools are used in enclosed spaces, the applicable requirements for concentrations of toxic gases and use of personal protective equipment shall apply.

(n) Only approved fuel containers shall be used, and such containers shall be safely stored.

(o) All hand-held tools, power tools and safety devices shall be used and maintained in accordance with manufactures specifications.

Comment/Response: Some hand held power tools come with trigger locks. If we remove the lock, does that violate the manufactures' specifications?

42 26.16. Jacks.

(a) The manufacturer's rated capacity shall be legibly marked on all lifting jacks and shall not be exceeded. All jacks shall be maintained and used in accordance with the manufacturers specifications.

(b) All lifting jacks shall have a positive stop to prevent over-travel.

(c) Blocking - When it is necessary to provide a firm foundation, the base of the lifting jack shall be blocked or cribbed. Where there is a possibility of slippage of the metal cup or the jack, a wood block shall be placed between the cap and the load. Work shall not be performed under any machinery until the proper blocking is in place and, with the exception of a jack, tight.

42 26.17. Stationary grinding machines, protective devices.

(a) Mechanically operated grinding wheels shall be equipped with safety washers, substantial retaining hoods and goggles or approved eye shields. Safety glasses or approved face shields shall be provided and located at the grinding location and shall be worn by persons when using the machine.

(b) Adjustable tool rests shall be set as close as required to manufacturer's specifications.

(c) Grinding wheels shall be operated according to the specification of the manufacturer.

42 26.18. Stationary grinding machines.

(a) Grinding wheels shall be equipped with (1) safety washers of adequate size; (2) substantial retaining hoods with maximum angular exposure of the grinding wheel periphery and sides of not more than ninety (90) degrees except that when work requires contact with the wheel below the horizontal plane of the spindle, an angular exposure shall begin not more than forty-five (45) degrees above the horizontal plane of spindle, which safety guards shall be strong enough to withstand the effect of a bursting wheel, (3) face shields or goggles, in good condition, to be worn by all operators, (4) work rests on floor and bench mounted grinders which are rigidly supported, readily available, and which shall be kept at a distance not to exceed one-eighth (1/8) from the surface of the wheel; (5) all other applicable requirements of the American National Standards Institute Safety Code for the use, care, and protection of abrasive wheels; and (6) dust collectors or exhaust ventilation systems vented to the outside of the building. Safety hoods, (guards or flanges) shall be mounted so as to maintain proper alignment with the wheel, and shall be of sufficient strength to retain fragments of the wheel in the case of accidental breakage. All abrasive wheels shall be ring-tested before mounting to insure they are free from cracks or defects, and shall fit freely on the spindle and not be forced on.

~~(b) All grinding wheels shall be operated in accordance with the manufacturer's specifications.~~

42 26.19. Protective structures fall object and roll over protective structures - All rubber tired or crawler mounted self-propelled scrapers, front-end loaders, dozers, graders, and tractors, manufactured after January 1, 1969 shall be provided with roll over protective structures.

42 26.20. Tires and repairs.

(a) A safety tire rack, cage, or equivalent protection shall be provided when inflating tires installed on split or rims equipped with locking rings or similar devices. Tires shall be deflated before repairs on them are started and means shall be provided to prevent wheel locking rims from creating a hazard during tire inflation.

(b) Heat shall not be applied to lug bolts, rims or wheels while tires are inflated.

(c) When work is being performed on models that are equipped with dual wheels both tires must be deflated for heating lugs before repair work begins. Safe means shall be provided for removing rocks or other hazardous material caught between the dual tires.

(d) No person shall be permitted in front of a tire being inflated either on or off equipment ~~and persons engaged in inflating or deflating tires shall perform such work in an area isolated from other persons.~~

(e) When fork lift trucks are used in mounting or transporting of tires, adequate means shall be taken to assure that tires are secured properly. No person shall be permitted to stand between the hub of a vehicle and fork lift truck when used to change a tire.

(f) A clip-on-air chuck shall be provided at all tire airing stations. At least six (6) feet of air hose shall be provided between the valve stem and inflation gauge.

(g) All tires shall be maintained in a safe condition according to manufactures specifications. Any tire with a defect which could be a hazard to the safe operations of a vehicle or to other persons shall be replaced immediately.

26.21 Operating equipment on extreme slopes.

(a) Extreme Slope. An extreme slope is any slope greater than a 2:1 slope.

(b) Prior to any equipment operating on an extreme slope, a meeting shall be conducted with a mine foreman and all persons involved in working on the extreme slope to develop a written plan as to how the equipment operators shall work on the extreme slope safely. The written plan shall specify the extreme slope work area and shall address the following variables:

Comment/Response: Most of our drill benching will be on areas of extreme slope. Can the plan cover the entire mine or does it have to be site specific? If so, how large can the site be?

1. Length of slope;

2. The type of landing at the bottom of the extreme slope;

3. Soil conditions including the ground pressure, the size and number of rocks on the extreme slope, weather conditions and visibility;

Comment/Response: Ground pressure – How is it measured? How do you measure the size of the rocks? Weight or dimensions? Do you count each rock?

4. Whether the equipment operating on the extreme slope is designed for such conditions;

5. Competence of the equipment operator.

(c) A record of that meeting and written plan shall be kept for one (1) year and made available to a representative of the Director upon request.

(d) In the event changes occur in the variable(s) listed in paragraph (b), of this subsection, another meeting with a mine foreman and all persons involved in working on the extreme slope shall occur addressing the changing variable(s) and how work shall continue safely.

(e) No equipment shall be used on an extreme slope unless that equipment possesses an approved ROPS and the equipment operator uses a seatbelt.

(f) No equipment shall operate on an extreme slope unless the equipment operator is able to see the full length of the extreme slope.

Comment/Response: Our permit lines generally run mid-length of steep slopes. We are not allowed to clear trees below the permit line, thus any work we do on permit will not provide visibility to the full length of the extreme slope. How does that effect a dump tractor working a the face of a valley fill in the dark? The operator cannot typically see the bottom of the fill.

(g) While working on an extreme slope, a sufficient landing area shall be maintained at the bottom of the slope consistent with the size of the equipment.

Comment/Response: Our permit lines generally run mid-length of steep slopes. We are not allowed to clear trees below the permit line, thus we cannot construct a "landing area" at the bottom of the slope.

(h) No person shall work below the extreme slope equipment operator or in other areas where they could be affected by people working on extreme slopes

(i) When variables dictate some safeguard must be utilized. The following safeguards are considered acceptable: cable winching; drilling and shooting the slope to lessen the degree of the slope; benching to lessen the degree of the slope; and adding additional materials to lessen the degree of the slope. Other forms of safeguard can be utilized if they provide a equal or greater level of safety.

(j) When cable winching is utilized as the safeguard for operating equipment on extreme slopes, the operator shall follow the manufacturer's specifications and limitations of the mobile equipment, wire ropes, and all attachments.

(k) When cable winching the following requirements must be met:

(1) The equipment being used to assist a dozer, or other equipment working on slopes shall be of proper size and strength to provide adequate anchorage. The equipment providing anchorage shall be positioned to provide maximum stability.

(2) The winch line assembly shall be of proper size and strength, and properly maintained to provide safety for all equipment.

(3) Winch cables used by equipment working on slopes shall be of proper size according to manufacturer's specifications.

(4) Winch cables shall be secured to the winch assembly drum according to the manufacturer's specifications.

(5) A minimum of three (3) wraps of winch cable shall remain on the drum at all times.

(6) The live-end connection device used to secure the two pieces of equipment together shall be of a design that minimizes the possibility of accidental disconnection. The connection device shall be of the proper strength for the duties performed and maintained in safe condition according to manufacturer's specifications.

(7) All winch cables shall be securely fastened to the live-end connection device by the proper number of wire-rope clamps, or properly wedged according to the manufacturer's specifications.

(8) All components of the winch line assembly shall be inspected by the equipment operator periodically during daily operations.

(m) Constant communications either audible or visual shall be maintained between equipment operators while working on extreme slopes. No one shall work on an extreme slope alone.

Comment/Response: The word "constant" needs to be defined. Does this mean uninterrupted radio conversation or a continual visual contact?

§56-3-43-27. Ramps, Tipples, Cleaning Plants Coal Handling Facilities, and other Surface Areas.

43 27.1. Surface installations generally.

(a) Surface installations, generally all mine structures, enclosures, and other facilities (including custom coal preparation) shall be maintained in good condition.

(b) In unusually dusty locations, electric motors, switches and controls shall be of dust-tight construction, or enclosed with reasonable dust-tight housings or enclosures.

(c) Opening in surface installations through which men or material may fall shall be protected by railings, barriers, covers or other protective devices.

(d) Illumination sufficient to provide safe working conditions shall be provided in and on all surface structures, paths, walkways, switch panels, loading and dumping sites, working areas and parking areas.

(e) Materials shall be stored and/or stacked in a manner to prevent stumbling or falling.

(f) Compressed and liquid gas cylinders shall be secured in a safe manner.

43 27.2. Machinery guards.

(a) Gears, sprockets; chains, drive, head, tail and take-up pulleys; flywheels; couplings; shafts; saw blades; fan inlets; and similar exposed moving machine parts which may be contacted by persons, shall be guarded adequately.

(b) Except when testing is necessary, machinery guards shall be secured in place while being operated.

(c) Belt rollers shall not be cleaned while belts are in motion.

43 27.3. Ramps and dumping.

(a) Both sides of any tipple or cleaning plant dumping ramp shall be provided with securely anchored rubbing boards of ample dimensions.

(b) An adequate dumping block at least eight (8) inches high shall be installed at all dumping points, excluding stockpiles.

(c) Adequate protection shall be provided at dumping locations where persons may be endangered by falling material.

(d) Dust control measures shall be taken where dust significantly reduces visibility of equipment operators.

(e) After the effective date of these regulations, all power lines in dumping areas shall, be maintained at least a minimum of six (6) feet above the largest piece of equipment used at such facility, including a dump truck in a raised position.

(f) All dumping ramps shall be of sufficient width to insure safe operation of vehicles used thereon.

(g) At no time shall any person be permitted to enter onto any coal bin, coal crusher, or any other coal dumping facility for means of breaking or removing coal or other materials that is of such a size that it will not drop through the grizzly, or screening device of said dumping facility, unless the equipment has been tagged out, de-energized, and locked out with a key or other approved adequate safeguards approved by the director.

(h) Ramps and dumps shall be of solid construction and have ample width, clearance and head room and be kept reasonably free of accumulations of material and spillage.

(i) Truck spotters shall be used when required by an authorized representative of the director.

(j) When car couplers are to be aligned in such rotary dump areas, a hook or other device shall be used. A suitable lifting jack and handle shall be provided at any rotary dump.

43 27.4. Fire protection.

(a) Where cutting or welding is performed at any location, means of prompt extinguishment of any fire accidentally started shall be provided.

(b) Adequate fire-fighting facilities, required by the ~~Department of Energy~~ Office of Miners' Health, Safety and Training, shall be provided on all floors. At least two (2) exits shall be provided for every floor of tipples and cleaning plants constructed after the effective date of these regulations.

(c) Signs warning against smoking and open flames shall be posted so they can be readily seen in areas or places where fire or explosion hazards exists.

(d) Smoking or open flame in or about surface structures shall be restricted to locations where it will not cause fire or an explosion.

(d) In structures where compressed gases are piped through permanently installed fixtures, such fixtures shall be examined daily for leaks and damage. If leaks or damage to the fixtures are discovered, repairs shall be made immediately.

43 27.5. Repairs of machinery.

(a) Machinery shall not be lubricated or repaired while in motion, except where safe remote lubricating devices are used. Machinery shall not be started until the persons lubricating or repairing it has given a clear signal.

(b) Means and methods shall be provided to assure that structures and the immediate area surrounding the same shall be reasonably free of coal dust accumulations.

(c) Where repairs are made to tipples, or cleaning plants, proper scaffolding and proper overhead protection shall be provided for workmen when necessary.

(d) Where overhead repair work is being performed at surface installations, adequate protection shall be provided for all persons working or passing below.

43 27.6. Stairs, platforms, etc.

(a) Stairways, elevated platforms and runways shall be equipped with handrails. Railroad car trimmer platforms are exempted from such requirements.

(b) Where required, elevated platforms and stairways shall be provided with toeboards. They shall be kept clear of refuse and ice and maintained in good condition.

~~43~~ 27.7. Belts, etc.

(a) Drive belts shall not be shifted while in motion unless such machines are provided with mechanical shifters.

(b) Belt dressing shall not be applied while in motion.

(c) Belt, chains and ropes shall not be guided onto power-driven moving pulleys, sprockets, or drums with the hand except equipment especially designed for hand feeding.

~~43-27.8.~~ Conveyors and crossovers.

(a) When the entire length of a conveyor is visible from the starting switch, the operator shall visually check to make certain that all persons are in the clear before starting the conveyor. When the entire length of the conveyor is not visible from the starting switch, a positive audible or visible warning system shall be installed and operated to warn persons when the conveyor will be started.

(b) Crossovers shall be provided where necessary to cross conveyors. All crossovers shall be of substantial construction with rails and maintained in good condition. Moving conveyors shall be crossed only at designated crossover points.

(c) A positive audible or visible warning system shall be installed and operated to warn persons that a conveyor or other tippie equipment is to be started.

(d) Pulleys of conveyors shall not be cleaned manually while the conveyor is in operation.

(e) Guards, nets, or other suitable protection shall be provided where tramways or conveyor belts pass over roadways, walkways or buildings.

(f) Where it is required to cross under a belt, adequate means shall be taken to prohibit a person from making contact with a moving part.

~~43-27.9.~~ Tippiie or cleaning operations.

(a) At least two (2) persons shall be continuously employed in the operation of a tippie or cleaning plant.

(b) Good housekeeping shall be practiced in and around tipples and cleaning plants. Such practices include cleanliness, orderly storage of materials, and the removal of possible sources of injury, such as stumbling hazards, protruding nails and broken glass.

(c) Adequate ventilation shall be provided in tipples and preparation plants.

(d) Coal dust in or around tipples or cleaning plants shall not be permitted to exist or accumulate in dangerous amounts.

~~43~~ 27.10. Travelways.

- (a) Safe means of access shall be provided and maintained to all working places.
- (b) Travelways, platforms and other access to areas where persons are required to travel or work, shall be kept free of all extraneous material and other stumbling or slipping hazards.
- (c) Inclined travelways shall be constructed of nonskid material or equipped with cleats.
- (d) Regularly used travelways shall be salted, sanded or cleared of snow and ice as soon as practicable.

~~43~~ 27.11. Ladders.

- (a) All ladders shall be securely fastened. Permanent ladders more than ten (10) feet in height shall be provided with backguards.
- (b) Ladders shall be of substantial construction and maintained in good condition.
- (c) Wooden ladders shall not be painted.
- (d) Fixed ladders shall not incline backward at any point unless equipped with backguards.
- (e) Fixed ladders shall be anchored securely and installed with at least three (3) inches of toe clearance.
- (f) Side rails of fixed ladders shall project at least three (3) feet above landings, or substantial handholds shall be provided above the landing.
- (g) No person shall be permitted to work off of the top step of any ladders.
- (h) Metal ladders shall not be used with electrical work, where there is danger of the ladder coming into contact with power lines or an electrical conductor.
- (i) The maximum length of a step ladder shall be twenty (20) feet and an extension ladder sixty (60) feet.

~~43~~ 27.12. Hoisting.

- (a) Hitches and slings used to hoist materials shall be suitable for handling the type of material being hoisted.
- (b) Persons shall stay clear of hoisted loads.

(c) Tag lines shall be attached to hoisted materials that require steadying or guidance.

(d) A hoist shall not lift loads greater than the rated capacity of the hoist being used.

43 27.13. Drawoff tunnels.

(a) When it is necessary for a tunnel to be closed at one (1) end, an escapeway not less than thirty (30) inches in diameter (or of the equivalent, if the escapeway does not have a circular cross section) shall be installed which extends from the closed end of the tunnel to a safe location on the surface; and if the escapeway is inclined for more than thirty (30) degrees from the horizontal, it shall be equipped with a ladder which runs the full length of the inclined portion of the escapeway. All escapeways shall be adequately illuminated.

Comment/Response: Again, "adequate illumination" is a vague statement and would lead to conflict and a judgment call by the inspector.

(b) Tunnels located below stockpiles, and coal storage silos, shall be adequately ventilated to maintain concentrations of methane below one percent (1%) per centum.

(c) Communications shall be provided near the entrance to the escapeways in drawoff tunnels

(e) Self Contained Self Rescuers for all persons working in the drawoff tunnel shall be provided and stored near the entrance to the escapeway.

Comment/Response: Theft of the SCSRs would be a major concern.

43 27.14. Ventilation and methane.

(a) Tests for methane in structures, enclosures, or other facilities where coal is stored shall be conducted by a qualified person with an approved methane detector at least once during each operating shift.

(b) Methane content in surface structures - If, at any time, the air in any enclosure contains 1.0 percent or more of methane, changes or adjustments in the ventilation of such installation shall be made at once so that the air shall contain less than one (1.0) percent methane.

(c) Dust accumulation in surface installations - Coal dust on surface structures, enclosures, or other facilities shall not be permitted to exist or accumulate in dangerous quantities.

43 27.15. Railroad equipment.

(a) Railroad cars shall be maintained under control at all times. Cars shall be dropped at a safe rate of speed and in such a manner that will insure that the car dropper maintains a safe position while working and traveling around the cars. The car dropper shall control the trip from one (1) location and not drop more cars than can be controlled from such location. A car dropper shall not

drop more than three (3) cars at one (1) time with one (1) brake.

(b) Railroad cars shall not be coupled or uncoupled manually from the inside of curves unless the railroad and cars are so designed to eliminate any hazard from coupling or uncoupling cars from inside curves.

(c) No person shall ride the drawhead or coupler of a railroad car. No person other than the car dropper shall ride cars. No car dropper shall ride the end of a car about to be coupled with another car if other brakes are available.

(d) Employees handling railroad cars shall have access to and use an approved distinct audible signaling device to give warning when cars are in motion. A car dropper shall only in case of an emergency, get on or off a moving car.

(e) Rail cars shall not be left on side tracks unless ample clearance is provided for traffic on adjacent tracks. Parked rail cars, unless held effectively by brakes, shall be blocked securely.

(f) Railroad cars shall be trimmed properly when they have been loaded higher than the confines of their cargo space.

(g) A minimum of thirty (30) inches continuous clearance from the farthest projection of moving railroad equipment shall be provided on at least one (1) side of the tracks; all places where it is not possible to provide thirty (30) inch clearance shall be marked conspicuously.

(h) Roadbeds, rails, joints, switches, frogs, and other elements on railroads shall be designed, installed and maintained in a safe manner consistent with the speed and type of haulage.

(i) Positive - acting stopblocks, derail devices, track skates, or other adequate means shall be installed where ever necessary to protect persons from runaway railroad equipment.

(j) Switch throws shall be installed so as to provide adequate clearance for switchmen.

(k) Where necessary, bumper blocks or the equivalent shall be provided at all track dead ends.

(l) Cars shall be inspected for broken steps, platforms and brake wheels and for defective brakes before dropping.

(m) Equipment operating speeds shall be consistent with conditions of roadways, grades, clearance, visibility, traffic and the type of equipment used.

(n) Safety belts shall be worn and properly attached by all car droppers handling railroad cars. All such belts shall be of a design to allow maximum safety to provide for immediate uncoupling.

43 27.16. Railroad track construction and maintenance.

(a) All parts of the track haulage road under the ownership or control of the operator shall be strictly constructed and maintained. Rails shall be secured at all points by means of plates or welds. When plates are used, plates conforming with the weight of the rail shall be installed and broken plates shall be replaced immediately. Appropriate bolts shall be inserted and maintained in all bolt holes. The appropriate number of bolts conforming with the appropriate rail plate for the weight of the rail shall be inserted, tightly secured, and maintained.

(b) All points shall be installed and maintained so as to prevent bad connections. Varying weights of rail shall not be joined without proper adapters. Tracks shall be blocked and leveled and so maintained so as to prevent high and low joints.

(c) Tracks shall be gauged so as to conform with the track mounted equipment. Curves shall not be constructed so sharp as to put significant pressure on the trucks of the track mounted equipment.

(d) Severely worn or damaged rails and ties shall be replaced immediately.

(e) When mining operations are performed within any twenty-four (24) hour period, operations shall be inspected at least every twenty-four (24) hours to assure safe operation and compliance with the law and regulations. The results of which inspection shall be recorded.

(f) Personnel who are required frequently and regularly to travel on belts or chain conveyors extended to heights of more than ten (10) feet shall be provided with adequate space and protection in order that they may work safely. Permanent ladders extending more than ten (10) feet shall be provided with back guards. Walkways around thickness that are less than four (4) feet above the walkway shall be adequately guarded. Employees required to work over thickener shall wear a safety harness adequately secured, unless walkways or other suitable safety devices are provided.

§56-3-44 28. Coal Storage Bins; Recovery Tunnels; Coal Storage Piles.

44 28.1.

(a) Coal storage bins hereafter constructed with vertical sides fifty (50) feet or over in height shall be provided with ventilators or louvers or both to provide adequate ventilation. Where roofs are constructed over coal storage bins, adequate ventilation shall be provided by stacks, ventilators, louvers or mechanical means.

(b) Where cutting or welding is performed at any location where coal is stored, means of prompt extinguishment of any fire accidentally started shall be provided, and the area where cutting or welding is performed shall be adequately watered down and rock-dusted.

(c) An escapeway shall be provided from any recovery tunnel hereafter constructed to a safe place on the surface; such escapeway shall be at least thirty (30) inches in diameter and where

inclined, a ladder shall be provided to extend full length of the escapeway to facilitate emergency exit.

(d) Extreme caution shall be exercised by all employees required to work at or near coal storage piles during coal recovery operations to avoid injury by coal slides or by being in or drawn into a chute.

§56-3-45-29. Fire Protection.

45 29.1. Fire extinguishers.

(a) A portable fire extinguisher containing a nominal weight of at least five (5) pounds shall be kept on each piece of mobile equipment. This requirement is also applicable to mobile equipment equipped with fire suppression systems.

(b) All portable fire extinguishers on equipment shall be properly secured.

45 29.2. Flammable liquids.

(a) Flammable liquids, such as oils, greases, gasoline and such other like materials shall be stored in buildings, compartments or closed containers used for this purpose only.

(b) The storage of surplus gasoline, oil, or other fuels, other than that which is in the fuel tank, shall be prohibited on any piece of equipment except for diesel equipment using gasoline starting engines, in this instance one (1) extra gallon of gasoline in an approved safety can (flash arresting screen with self-closing lid) may be stored on the equipment securely fastened in a location on the equipment out of the way of moving objects.

(c) Flammable liquids shall not be used to clean machinery.

(d) Combustible materials, grease, lubricants, paints, flammable liquids, shall not be permitted to accumulate where fire hazards exist.

45 29.3. Fueling and storage.

(a) Internal combustion engines, except diesels, shall be shut off and stopped before being fueled.

(b) Areas surrounding flammable liquid storage tanks, electric substations and transformers shall be kept free from grass, (dry) weeds, underbrush, and other combustible materials, for at least twenty-five (25) feet in all directions.

(c) Fuel lines on fuel storage tanks shall be equipped with valves to cut off fuel at the source and shall be located and maintained to minimize fire hazard.

(d) Smoking and use of open lights are prohibited in all places in which flammable materials are stored and in other places where there is a fire hazard.

45 29.4. Maintenance of fire fighting equipment.

(a) Fire fighting equipment shall be continuously maintained in a usable and operative condition. Fire extinguishers shall be examined at least once every six (6) months. The date of such examination shall be recorded on a permanent tag attached to the extinguisher.

45 29.5. Warnings - Warning signs prohibiting smoking and open flames shall be posted where they can be readily observed in areas or locations where fire or explosion hazards exist.

45-29.6. Drills - Fire drills and demonstrations with various types of available fire-fighting equipment shall be held for employees at least once annually. A record of such demonstration shall be recorded.

§56-3-46-30. Duties of Persons Subject to Article; Rules and Regulations of Operators.

46 30.1.

(a) It shall be the duty of the operators, mine foremen, supervisors, mine examiners, and other officials to comply with and to see that others comply with the provision of these rules and regulations.

(b) It shall be the duty of all employees to comply with these rules and regulations and to cooperate with management and the ~~Department of Energy~~ Office of Miners' Health, Safety and Training in carrying out the provisions hereof.

(c) Reasonable rules and regulations of an operator for the protection of employees and preservation of property that are in harmony with the provisions of these rules and regulations shall be complied with. They shall be printed on cardboard or in book form in the English language and posted at some conspicuous place about the mine or mines, and given to each employee upon request.

§56-3-47 31. Protective Equipment and Clothing.

47 31.1. Eye protection.

(a) Welders and helpers shall use adequate shields or goggles to protect their eyes.

(b) All employees shall have approved goggles or shields and use the same where there is a hazard from flying particles, or other eye hazards.

47 31.2. Clothing.

(a) Employees engaged in haulage operations and all other persons employed around moving equipment shall wear snug-fitting clothing.

(b) Protective gloves shall be worn when material which may injure hands is handled. Gloves with gauntleted cuffs shall not be worn around moving equipment.

47 31.3. Safety hats and safety toed shoes.

(a) Safety hats and safety toed shoes shall be worn by all persons while in or around a surface mine, tipples or cleaning plants coal handling facilities, and other surface areas. ~~Safety toed shoes shall be worn by all persons while in or around a surface mine, tippie or cleaning plant.~~

(b) ~~All surface mine employees shall be required to wear safety helmets when working in areas where there is a possible danger of head injury from impact, or from falling or flying objects, or from electrical shock and burns: Provided, That such employees shall not be required to wear such safety helmet~~ hats while operating machinery equipped with a falling object protective structure which satisfies the impact and penetration requirements established by the American National Standards Institute, Safety Requirements for Industrial Head protection, Standard Z89.1, unless the Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training finds that the dangers set forth herein may be present: **Provided, however,** That such employees shall be required to wear safety ~~helmets~~ hats while not operating such equipment including periods of travel to and from such equipment. The safety ~~helmets~~ hats required hereunder shall meet the specifications for such ~~helmets~~ hats as prescribed by the mine health and safety administration.

47 31.4. Life jackets and belts.

(a) Persons shall wear safety ~~belts~~ harnesses and lifelines where there is a danger of falling. A person shall continuously tend the lifeline when bins, tanks, auger holes, or other dangerous areas are entered.

(b) Life jackets or ~~belts~~ safety harnesses shall be worn where there is a danger from falling into water.

§56-3-48 32. First Aid Equipment.

48 32.1. First aid stations and equipment - Each operator of a surface coal mine, tippie, and preparation plant shall maintain a supply of first aid equipment. First aid equipment shall be located within one thousand (1,000) feet of the working pit, unless a ten (10) unit first aid kit is provided in the pit. When ten (10) unit kits are provided in the pit, such first aid equipment may be maintained within two thousand (2,000) feet of the pit area.

First aid equipment shall contain the following:

- (1) One stretcher.
- (2) One broken-back board, or approved combination stretcher.
- (3) Twenty-four triangular bandages.
- (4) Eight four-inch bandage compresses.
- (5) Sixteen two-inch bandage compresses.
- (6) Twelve one-inch adhesive compresses.
- (7) One foille.
- (8) Two approved blankets.
- (9) One rubber blanket.
- (10) Two tourniquets.
- (11) One one-ounce bottle of aromatic spirits of ammonia.
- (12) Two inflatable plastic leg splints.
- (13) Two inflatable plastic arm splints.
- (14) Six small splints, metal or wooden.
- (15) Two cold packs.

~~48~~ 32.2. Proper storage of first aid supplies - All first aid supplies required to be maintained shall be stored in suitable sanitary, dust-tight, moisture proof containers. First aid supplies shall be accessible to the miners.

~~48~~ 32.3. Emergency arrangements.

(a) Each operator of a mine shall make arrangements with a licensed physician, medical service, medical clinic, or hospital to provide emergency medical assistance while any person is on duty at a mine.

(b) Each operator of a mine shall make arrangements with an approved ambulance service or otherwise provide for an approved emergency transportation while any person is on duty at a mine.

(c) Each operator shall have arrangements made with an ambulance service, or other emergency transportation facilities for injured persons to be transported from the work site to a licensed physician, medical service, medical clinic, or hospital provided pursuant to subsection (b) above, while people are actually employed at the operation.

(d) Each operator of a surface coal mine shall immediately after making arrangements required under this section, or immediately after any change of such agreement, post at the appropriate places at the mine, the names, titles, addresses, and telephone numbers of all persons and/or services currently available under such arrangements to provide medical assistance and transportation of injured persons at the mine.

48 32.4. Emergency communications.

(a) Each operator of a surface mine shall provide two (2)-way communication at all times miners are present between all work sites at the mine and an emergency communication center which may be at the mine office or elsewhere at the mine.

(b) Each operator of a surface coal mine shall establish and maintain a direct two-way (2) communication system from such emergency communication center at the mine to the nearest point of medical assistance for use in an emergency. Except as hereinafter provided, such emergency communication system shall be by telephone. If telephone communication from the emergency communication center to the nearest point of medical assistance is not possible at any one (1) mine, the director may allow by permit such communication by radio transmission to any emergency assistance facility (e.g. state police, sheriff, local hospital) which has available the means of communication with the person or persons providing the requisite emergency medical assistance or transportation.

§56-3-49 33. Thermal Coal Dryers and Plants.

49 33.1. Thermal coal dryer plants shall be hereafter constructed, maintained and operated in compliance with the following provisions.

(a) Good housekeeping shall be practiced in and around thermal dryer plants.

(b) Adequate fire-fighting facilities shall be provided on all floors.

(c) When welding and cutting operations are to be performed in a dryer structure, the area shall be wetted down thoroughly and adequate fire-fighting apparatus shall be readily available during the operation.

(d) Only qualified persons shall be permitted to operate dryers; however, this provision shall not prohibit qualified persons from training other persons to become qualified operators.

(e) Dryer control panels shall be provided with audible and visible alarm devices; such devices should be adjusted to function at somewhat less than maximum dryer temperature.

(f) A bypass or relief stack equipped with an automatically operated damper shall be provided for by passing gases from the heating units to the outside atmosphere during emergency or normal shutdown operations.

(g) Thermal coal dryers hereafter installed shall not be enclosed except that roof may be used. Whenever it is deemed necessary to enclose thermal dryers, such equipment shall be in a fire proof structure.

(h) Dryer installations and discharge stacks shall be protected with adequate explosion release vents that open to the outside atmosphere.

(i) Thermal coal dryers shall be located at a safe distance from tipples, cleaning plants, mine openings and surface buildings, such as oil storage areas, explosive magazines, and other buildings where coal dust, sparks and flames are likely to enter and become ignited or otherwise cause danger of fires.

(j) Dryers shall be equipped with quick-response heat control devices which in the event of super elevated temperatures, will automatically divert the hot inlet gases into a bypass stack, thereby bypassing the drying chamber and at the same time stopping the fuel from being supplied to the air heater.

(k) All dryers, conveyors and other fine coal transporting machines shall be constructed as dust-tight as practicable. Where necessary, such equipment shall be provided with removable covers for inspection and cleaning and shall be provided with vent pipes to the outside atmosphere to permit the escape of distilled gases.

(l) Dryers shall be examined thoroughly after normal and emergency shutdown for fires and coal dust accumulations.

(m) Dryer controls, valves, and mechanical equipment shall be frequently inspected, and no dryer shall be operated with defective mechanical equipment.

(n) The gauges of temperature control instruments shall be of the recording type.

(o) Operating rules suitable for the characteristics of each dryer system and the materials processed shall be developed and shall be available at the control panel.

(p) Electrical equipment, electrical wiring and lighting fixtures shall be of dust-tight construction.

(q) Adequate illumination shall be provided.

(r) Dryers shall not be operated beyond their rated evaporation capacity.

(s) Fluid bed dryers shall be provided with water sprays of sufficient capacity for use in event of fire.

(t) After shutdown, thermal dryers shall be cleared of hot coals so as to minimize ignitions on succeeding start-ups.

(u) Thermal coal dryers previously installed in a tippie of cleaning plant shall be separated where practicable from other working areas by substantial partitions capable of providing greater resistance to explosion pressures than an exterior wall or walls.

(v) When it is necessary to use extension cables for emergency illumination, such lighting devices shall be dust-tight and adequately guarded. When it becomes necessary to perform work in dryer bins or any other dusty area, permissible cap lamps shall be used for illumination.

§56-3-50 34. Explosion or Accident; Notice: Investigation by Department of Energy Office of Miners' Health, Safety and Training.

50 34.1. Whenever, by reason or any explosion or other accident in or about any coal mine or the machinery connected therewith, loss of life, or serious personal injury shall occur, it shall be the duty of the superintendent of the mine, and in his absence, the mine foreman in charge of the mine, to give immediate notice to the Director of the Department of Energy Office of Miners' Health, Safety and Training and the inspector of the district, stating the particulars of such accident. If anyone is killed, the inspector shall immediately go the scene of such accident and make such recommendations and render such assistance as he may deem necessary for the future safety of the men, and investigate the cause of such explosion or accident and make a record thereof which he shall preserve with the other records of his office, the cost of such records to be paid by the Department of Energy Office of Miners' Health, Safety and Training, and a copy shall be furnished to the operator and other interested parties. To enable him to make such investigation, he shall have the power to compel the attendance of witnesses and to administer oaths or affirmations. The Director of the Department of Energy Office of Miners' Health, Safety and Training shall have the right to appear and testify and to offer any testimony that may be relevant to the question and to cross-examine witnesses.

§56-3-51 35. Preservation of Evidence Following Accident or Disaster.

51 35.1. Following a mine accident resulting in the death of one (1) or more persons and following any mine disaster, the evidence surrounding such occurrence shall not be disturbed after recovery of bodies or injured persons until an investigation by the Department of Energy Office of Miners' Health, Safety and Training has been completed.

§56-3-52 36 Monthly Report by Operator.

52 36.1. The operator of every surface mine shall, on or before the end of each calendar month, file with the Director of the Department of Energy Office of Miners' Health, Safety and Training a report covering the preceding calendar month on forms furnished by the director. Such reports shall state the number of accidents which have occurred, the number of persons employed, the days worked and the actual tonnage mined, on each permit issued by the Department of Natural Resources.

§56-3-53 37. Emergency Medical Personnel.

53 37.1. Emergency personnel in coal mines, emergency medical personnel shall be employed in every mine in the state. On or before the first day of July, one thousand nine hundred seventy-eight (1978), at least one (1) emergency medical attendant as defined in section 2(16-4C-2), article 4C, chapter 16 of this Code, paramedic as defined in section 2 (30-3b-2), article 3B, chapter 30 of this code, or physician assistant as defined in section 1 (30-3a-1), article 3A, chapter 30 of this code, shall be employed at a mine for every seventy (70) employees or any part thereof who are engaged at one (1) time, in the extraction, production or preparation of coal: **Provided**, That the provision of this section shall not apply to mines employing no more than ten (10) employees.

Said emergency medical attendants shall be employed at their regular duties at a central location convenient for quick response to emergencies, and further shall have available to them at all times such equipment as shall be prescribed by the director, in consultation with the director of the Department of Health.

§56-3-54 38. First Aid Training of Coal Mine Employees.

54 38.1. Each coal mine operator shall provide every new employee within six (6) months of the date of his employment with the opportunity for first aid training as prescribed by the director unless such employee has previously received such training. Each coal mine employee shall be required to take refresher first aid training of not less than five (5) hours within each twenty-four (24) months of employment. The employee shall be paid regular wages, or overtime pay if applicable, for all periods of first aid training.

§56-3-55 39. Certificate of Competency and Qualification or Permit of Apprenticeship Required of on all Surface and Underground Mines.

55 39.1. Except as hereinafter provided, no person shall work or be employed as a surface miner for the purpose of performing normal duties as at a surface or underground miner in any mine in this State unless he holds at the time he performs such duties a certificate of competency and qualification or a permit of apprenticeship issued under the provisions of Chapter 22A, ~~Article 2~~ of the West Virginia Code.

§56-3-56 40. Permit of Apprenticeship - Surface Miner.

56 40.1. A permit of apprenticeship - surface miner, shall be issued by the director to any person who has demonstrated by examination a knowledge of the subjects and skills pertaining to employment in the surface mining industry, including, but not limited to general safety, first aid, miner and operator rights and responsibilities, general principles of electricity, health and sanitation, heavy equipment safety, high walls and spoil banks, haulage, welding safety, tippie safety, state and federal mining laws and regulations and such other subjects as may be required by the board of miner training, education and certification: **Provided**, That each applicant for said permit shall complete a program of education and training of at least forty (40) hours, which program shall be determined by

the board of miner training, education and certification and provided for and implemented by the director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training: **Provided, however,** That if a sufficient number of qualified applicants having successfully completed the state training provided by the state ~~Department of Energy~~ Office of Miners' Health, Safety and Training are not available, the operator may request approval from the director to conduct his own preemployment training program so long as such training adequately covers the minimum criteria determined by the board and such trainees shall be eligible for the same certification as provided by the state.

§56-3-~~57~~41. Supervision of Apprentices.

~~57~~ 41.1. Each holder of a permit of apprenticeship shall be known as an apprentice. Any miner holding a certificate of competency and qualification may have one (1) person working with him, and under his supervision and direction, as an apprentice, for the purpose of learning and being instructed in the duties and calling of mining. Any mine foreman or assistant mine foreman may have three (3) persons working with him under his supervision and direction, as apprentices, for the purpose of learning and being instructed in the duties and calling of mining: **Provided,** That a mine foreman, assistant mine foreman supervising apprentices in an area where no coal is being produced or which is outby the working section may have as many as five (5) apprentices under his supervision and direction, as apprentices for the purpose of learning and being instructed in the duties and calling of mining or where the operator is using a production section under program for training of apprentice miners, approved by the board of miner training, education and certification.

~~57~~ 41.2. Every apprentice working at a surface mine shall be at all times under the supervision, ~~and control,~~ and in communication with of at least one (1) person who holds a certificate of competency and qualification.

In all cases, it shall be the duty of every miner operator who employs apprentices to ensure that such persons are effectively supervised and to instruct such person in safe mining practices. Each apprentice shall wear a red hat which identifies him as such while employed at or near a mine. No person shall be employed as an apprentice for a period in excess of eight months, except that in the event of illness or injury, time extensions shall be permitted as established by the Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training.

§56-3-~~58~~ 42. Certificate of Competency and Qualification - ~~Underground or~~ Surface Miner.

~~58~~ 42.1. A certificate of competency and qualification as an underground miner or as surface miner shall be issued by the director to any person who has at least six (6) months total experience as an apprentice and demonstrated his competence as a miner by successful completion of an examination given by the director or his representative in a manner and place to be determined by the board of miner training, education and certification: **Provided,** That all examinations shall be conducted in the English language and shall be of a practical nature, so as to determine the competency and qualifications of the applicant to engage in the mining of coal with reasonable safety to himself and his fellow employees: **Provided, however,** That notice of the time and place of such examination shall be given to management at the mine, to the local union there if there is a local

union, and notice shall also be posted at the place or places in the vicinity of the mine where notices to employees are ordinarily posted. Examinations shall also be held at such times and places, and after such notice, as the board finds necessary to enable all applicants for certificates to have an opportunity to qualify for certification.

§56-3-59 ~~43~~. Refusal to Issue Certificate; Appeal.

59 ~~43~~.1. If the director or his representative find that an applicant is not qualified and competent, he shall so notify the applicant not more than ten (10) days after the date of examination.

Any applicant aggrieved by an action of the director in failing or refusing to issue a certificate or qualification and competency may, within ten (10) days of notice of the action complained of, appeal to the director who shall promptly give the applicant a hearing and either affirm the action or take such action as should have been taken.

§56-3-60 ~~44~~. Limitations of Article.

60 ~~44~~.1. All persons possessing certificates of qualification issued by the Office of Miners' Health, Safety and Training of this State, entitling them to act as mine foreman fire bosses; or assistant mine foreman fire bosses; shall be eligible to engage at any time as miners in the mines of this State. Supervisory and technically trained employees of the operator, whose work contributes only indirectly to mine operations, shall not be required to possess a miner's certificate.

Notwithstanding the provisions of Chapter 22A, ~~Article 3~~, every person working as a surface miner in this State on or before the first day of July, one thousand nine hundred and seventy-four (1974) shall, upon application to the director, be issued a certificate of competency and qualification.

§56-3-61 ~~45~~. Violations; Penalties.

61 ~~45~~.1. Any person who knowingly works in or at a mine without a certificate issued under the provisions of this article, any person who knowingly employs an uncertified miner to work in or at a coal mine in this State, or, any operator who fails to insure the supervision of miners holding a certificate of apprenticeship as provided for in section five (22-6-5) of this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500).

§56-3-62 ~~46~~. Operators Filing of Plans - Oil and Gas Wells.

62 ~~46~~.1. Before a coal operator conducts surface or strip mining operations ~~as defined in article 6, chapter 20 of this code~~, within two hundred (200) feet of any well, including the removal of coal and other material, the operator shall file with the ~~Department of Energy~~ Office of Miners' Health, Safety and Training and furnish to the well operator by certified mail, return receipt requested, its mining maps and plans (which it is required to prepare, file and update to and with the regulatory authority) for the area within two hundred (200) feet of the well, together with a notice, or a form furnished by the ~~Department of Energy~~ Office of Miners' Health, Safety and Training, informing

them that the mining maps and plans are being filed or mailed pursuant to the requirements of this section, and representing that the planned operations will not unreasonably interfere with access to or operation of the well and will not damage the well. In addition, the coal operator shall furnish the well operator with evidence that it has in force public liability insurance, with at least the minimum insurance coverage required by article 6-3, chapter 20 22 of this code, and the rules and regulations promulgated thereto and thereunder.

Once these mining maps and plans are filed with the ~~Department of Energy~~ Office of Miners' Health, Safety and Training, the coal operator may proceed with its surface or strip mining operations in the manner and as projected on such plans or maps, so long as such surface mining operations do not unreasonably interfere with access to, or operation of, the well or do not damage the well.

§56-3-63 47. Annual Examination of Persons Using Flame Safety Lamps; Record of Examination; Maintenance of Methane Detectors, Etc.

63 47.1. No person shall be qualified for testing for methane and for oxygen deficiency unless such person has been trained and demonstrates to the satisfaction of an authorized representative of the Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training that he is qualified to test for methane with a flame safety lamp or other approved methane detector. Records of such examinations shall be kept by the operator and the Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training.

Persons whose duties require them to use a flame safety lamp and other approved detector, that have been qualified by the ~~Department of Energy~~ Office of Miners' Health, Safety and Training to test for methane and oxygen deficiency, shall be examined at least annually to their competence by a certified surface mine foreman, and a record that such examination was given, together with pertinent data relating thereto, shall be kept on file by the operator and a copy shall be furnished to the ~~Department of Energy~~ Office of Miners' Health, Safety and Training.

Persons whose duties require them to administer the annual examinations for methane and oxygen deficiency shall be examined annually by a qualified official from the ~~Department of Energy~~ Office of Miners' Health, Safety and Training. Each operator shall provide for the proper maintenance and care of the permissible flame safety lamp or any other approved device for detecting methane and oxygen deficiency by a person trained in such maintenance, and before each shift, care shall be taken to insure that such lamp or other device is in a permissible condition.

Flame safety lamps shall be given proper maintenance and inspection before each working shift in a manner recommended by the manufacturing company and approved by the director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training. Other approved gas detectors shall be given proper maintenance and shall be tested in accordance with the manufacturer's recommendations before each working shift and calibrated each thirty (30) calendar days.

§56-3-48 Mine map.

48.1 The operator shall maintain an accurate and up-to-date map of the mine, on a scale of not less than 100 nor more than 500 feet to the inch, at or near the mine, in an area chosen by the mine operator, with a duplicate copy on file at a separate and distinct location, to minimize the danger of destruction by fire or other hazard. The map shall show:

(a) Name and address of the mine;

(b) The property or boundary lines of the active areas of the mine;

(c) Contour lines passing through whole number elevations of the coalbed being mined. The spacing of such lines shall not exceed 25-foot elevation levels, except that a broader spacing of contour lines may be approved by the District Manager for steeply pitching coalbeds. Contour lines may be placed on overlays or tracings attached to mine maps.

Comment/Response: Will this be the lowest seam being mined or all major seams to be mined within the DEP permit?

(d) The general elevation of the coalbed or coalbeds being mined, and the general elevation of the surface;

(e) Either producing or abandoned oil and gas wells and lines located on the mine property;

Comment/Response: Is this in the DEP permit boundary or within a specified distance of the permit boundary?

(f) The location and elevation of any body of water dammed or held back in any portion of the mine: Provided, however, Such bodies of water may be shown on overlays or tracings attached to the mine maps;

(g) All prospect drill holes that penetrate the coalbed or coalbeds being mined on the mine property;

(h) All auger, highwall miner and strip mined areas of the coalbed or coalbeds being mined on the mine property together with the line of maximum depth of holes drilled during auger and highwall mining operations.

Comment/Response: Does this mean current HWM/augering or past or both?

(i) All worked out and abandoned areas;

Comment/Response: Does this pertain to the deep mine workings or the surface mine workings?

(j) The location of railroad tracks and public highways leading to the mine, and mine buildings of a permanent nature with identifying names shown;

(k) Underground mine workings underlying and within 1,000 feet of the active areas of the mine;

Comment/Response: Underground mine workings underlying..... How deep?

(l) The location and description of at least two permanent base line points, and the location and description of at least two permanent elevation bench marks used in connection with establishing or referencing mine elevation surveys; and,

(m) The scale of the map.

48.2 Certification of Mine Maps.

Mine maps shall be made or certified by an engineer or surveyor registered in the State of West Virginia.

Comment/Response: How often must the map be certified?

48.3 Availability of Mine Map.

The mine map maintained in accordance with the provisions of § 56-3-64 48 shall be available for inspection by an authorized representative of the Director.

Comment/Response: General comment: Mine property definition: Is the mine property the current DEP permitted area or does this encompass the leased/owned property of the complex or how far from the permit boundary?

From: "Marty Petrunyak" <mpetranyak@nelbro.com>
To: "Barry Koerber" <Barry.Koerber@wvago.gov>
Date: 7/15/2009 10:43:37 AM
Subject: Nelson Brothers LLC comments to proposed changes to 56CSR3

Barry,

Attached are Nelson Brothers LLC Comments as to the proposed changes.

Thanks,

Marty Petrunyak

Nelson Brothers LLC

Appalachian Business Unit Manager

Proposed changes to 56CSR3

§56-3-3 Definitions

- 3.27. Detonator. --The term "Detonator" shall mean electronic blasting caps, ~~electrical~~ electric blasting caps, and nonelectric delay blasting caps.

The Term electronic should be added in the definition. Electrical needs to be changed to electric.

- 3.28. Nonelectric delay blasting caps. --The term "Nonelectric Delay lasting Caps" shall mean a blasting cap with an intergral delay element in conjunction with and capable of being detonated by a detonation impulse or signal from a shock tube miniaturized detonating cord and does not require the use of electric energy to function.

The word shock tube should be added to this definition.

- 3.35. Blasting area. --Shall mean the area near blasting operations in which concussion or flying material can reasonably be expected to cause injury. The Blasting area is to be determined by the Blaster in Charge

The blaster in charge needs to determine the blast area.

§56-3-15 Explosives and Blasting.

- 15.1(j) Proper maintenance and examinations shall be performed to prevent overheating of on the emulsion pump and a record of the examinations shall be kept at the mine for one year and made available to a representative of the Director upon request.

The recordkeeping requirement for this part of the regulation would be burdensome because the type of truck that have emulsion pumps move to different jobs.

- 15.3(d) Explosives, blasting caps and electric blasting caps and detonators shall not be carried in pockets of clothing or left lying around unguarded.

If this part is removed it will include all explosives and detonators.

- 15.3(h) Driving vehicles or dragging boxes over firing lines, detonator wires, explosives, blasting agents, and detonators shall be prohibited. The backing of drills driving of any vehicles over loaded holes shall be prohibited.

The regulation should be ALL vehicles.

15.4(c) No equipment except the drill and explosive truck, other than necessary equipment for road repairs to remove the drill or explosive truck, shall be permitted to work within fifty (50) feet of loaded holes or holes being loaded. This distance of fifty (50) feet shall include the entire column of the loaded hole when equipment is excavating on the same bench level as loaded holes. In cases of emergency, in which the equipment indicated above has malfunctioned and cannot be removed from the area, the blaster and certified foreman shall direct the use of maintenance equipment if required to safely repair and/or remove the disabled equipment from the area. Adequate precautions shall be taken to prevent extraneous electricity from entering an ~~electrical~~ electric blasting circuit. Electrically-powered equipment and trailing cables shall be prohibited from being within one hundred (100) feet of loaded holes or holes being loaded. When a potential source of extraneous electricity is present in the general area and ~~electrical~~ electric detonators are to be used, a stray current test shall be made on the bench prior to commencing loading holes; if current is detected, the source of the extraneous electricity shall be neutralized before loading may begin.

Electrical should be replaced with electric.

15.4(g) Tamping shall not be performed directly on a ~~capped~~ primer.

A primer does have a (cap)detonator in it already.

15.5(c) When shooting highwall and overburden, the firing/lead lines shall be at least ~~one thousand (1000)~~ five hundred (500) feet in length.

The Blaster should determine what would be a safe distance.

15.5(j) Provisions ~~shall~~ may include, but not be limited to, insulating and guarding the firing/lead line connections to the firing device or blast controller, providing and using insulating mats on which the blaster may stand and also place under the firing device or blast controller, the use of an additional properly-timed detonator placed in the firing/lead line to sever the line and prevent the possibility of electrical feedback to the firing device or blast controller and use of a remote firing device.

Shall to May. The blaster should determine when and where this is needed.

15.7(b) No person shall return to the area where blasting has been performed until the dust has settled and the area cleared of smoke. The blaster shall not return to the area where blasting has been performed until the dust, smoke and fumes have cleared or a minimum of five minutes has passed.

Add a minimum of five minutes has passed.

15.8(d) Immediately after firing a misfired shot, the firing/lead lines

shall be disconnected from the firing device or blast controller when electric ~~or electronic~~ detonators are used. When using electric detonators, the ends of the firing/lead lines shall also be shunted. When using electronic detonators, follow the manufacturer's recommendations.

Add use the manufacturer's recommendation.

From: "Chris R Hamilton" <chamilton@wvcoal.com>
To: <blk@wvago.gov>
Date: 7/15/2009 4:34:33 PM
Subject: 1 of 3 – Comments to Title 56, Series 3 Proposed Rules

July 15, 2009

Director Ron Wooten

WV Office of Miners' Health, Safety and Training

1615 Washington Street East

Charleston, WV 25311

RCVD JUL 15 2009

RE: Comments to Title 56, Series 3 Proposed Rules Governing The Safety
Of Those Employed In And Around Surface Mines in West Virginia

Dear Director Wooten:

Please accept the following comments on behalf of the West Virginia Coal
Association to the above set of proposed administrative rules and
regulations.

We offer the following general comments to the proposed rules:

1. Initially, we question the underlying need or desirability of the proposed rule changes and new provisions of law contained therein. We would observe for the record that these changes were not advanced to the State Board of Coal Mine Health & Safety or the Legislature for their consideration. Nor was any safety surface concern of a "surface" origin raised with either the Board or Legislature.
2. We also question whether adequate authority exist for the Agency to unilaterally propose and promulgate new safety standards, new miner certifications and training requirements. It would appear that this rule making is in conflict with the role and statutory authority of the WV Board of Coal Mine Health and Safety and the WV Board of Miner Training, Education & Certification.
3. Additionally, we note for the record that the agency neglected to analyze the fiscal impact of these proposed requirements on the mining industry. We submit for your consideration, that the fiscal impact will be significant in both the outlay of new capital and in dedicating additional resources towards compliance demands necessitated by this rule-making.

Our specific comments to the proposed rule are contained on the following pages.

RCVD JUL 15 2009

Sincerely,

Chris Hamilton

Comments to Title 56, Series 3 Proposed Rules Governing The Safety Of Those Employed In And Around Surface Mines in West Virginia

1. Page 29 (a) Since "Active" workings are not defined, should we only do examinations where people are actually working since only working places are defined in 3.26 of the definitions section.
2. Page 29 (c) will become a violation magnet from trying to makeup safety meetings and keep the required records of such meetings. This will be paramount in an accident investigation.
3. Page 30 (10.5) Instructions are not defined in the definitions. This will become a nightmare in having to write out all commands and keep a record of such commands. Even inspectorate personnel do not have to keep their notes when they inspect with the state and turn them in. This will be almost impossible to manage.
4. Page 32 (c) Becomes totally un-managable to report a highwall fall. By doing this it would require the ground control plan to be revised to control something that can't be predicted beyond mining responsibly.
 - a. Additionally, there is no mechanism built into the submittal criterion to determine how to resolve any disputes that may arise out of a ground control plan submittal. Without a dispute the mine could be held hostage and be forced to accept something the State wants and cost extra effort and a huge expense but may not be necessary to mine safely. Even the criterion in 30 CFR 77.1000 Ground Control Plans does not require an approval from the MSHA.
 - b. In item (g) the stated regulations mean you can't even barricade the wall needs to be re-worded to make it achievable.
5. Page 33, 13.4 (a) slide is again an un-defined term and is not described well enough to mean a slide of a fill, spoil, overburden or what. Material is constantly sliding on a surface mine, slips in roads, etc. How would a certified person know what is expected of him? He would not so this should be removed.

a. In 13.8 (a) does this mean one could not have a tire track against a berm on a fill or lift? Don't think this will work. Should just say no end dumping because this would cause all loads to dump short and be pushed over.

b. (b) Safe angle of repose is another un-define term. Type of material and the moisture content are factors to consider but steep slope is defined as greater than 2 to 1. This effectively puts valley fills out of commission.

6. Page 35 (d & e) are not always possible and it is a good practice but will cause un-even walls and this causes more high wall issues as well as pit issues.

7. Page 37 15.3 (e) Who close is the approach to be? What or who shall determine this? Blast area by definition is un-defined so should we be 1000 feet away or farther? The known location of a storm would be more practical, but then again is sight or sound the method of an approaching storm?

8. Page 38 (i) How would one know they are frozen when delivered in the winter months?

9. Page 40 (q) Places the foreman here at the beginning of the process and takes all responsibility away from the individuals doing the work. Not a good idea!

a. (r) could cause excessive spoil size in the toe of shots which creates an even bigger hazard to the loading cycle in trying to manage this safely.

10. Page 48. (k) does effectively eliminate the coal truck certificate from surface but what about from the underground operations? Grandfathering the surface truckers won't help the truckers hauling from underground mines at all.

a. (a) on this page is not defined sufficiently and thus is arbitrary. Where is this to be located at? Anywhere on the job?

11. Page 52. The entire section on Highwall mining 56-3-19 could cause real issues in plan approvals and especially the use of un-defined terms with enforcement consequences. In particular, on page 54 item (l) on wearing gloves when handling cables. This is not a requirement underground and cables are handled daily.

a. Items (f & g) page 56 are requiring un-necessary exposure to individuals close to the highwall just to take a methane test. The monitor on the machine is capable of doing the same without risking injury to persons.

b. On page 57, If the State wants to search persons they should do so, not make anyone from Management do this for them.

c. On page 58 20-9,10,11 are new issues to address and are located in places that are not defined by regulation. Who should keep the water

not responsive

and how often should one be allowed to stop and go and get it?

12. Page 71 item 26.1 (c) What is an Imminent danger defect? This again is un-defined and causes hardship on the supervisor. Is it the operators call? Is an air conditioner and imminent danger in hot weather, can't be done unless defined.

13. Page 74 item (k) should state should be maintained free of accumulations of dust, water, and oil, not free from them otherwise we could not operate!

14. Page 75 item (e) goes hand in hand with the comment from page 71 on imminent danger defects on equipment. Does a fan mean this is ok?

15. Page 78 item (o) is and will be impossible. To have a manufactures manual and know what are the recommendations for all hand tools will the mechanics will only get reading done. Same thing with item (a).

a. In item 26.17 (a) the word safety glasses should be replaced with goggles to match the first part of the statement

16. Page 80 item 26.20 (g) again another instance of manufactures specifications to maintain tires is another un-defined term and would mean that all tires should be inspected by the manufacturer to determine if they pass their specifications.

17. Page 80 26.21 entire section will be impossible to do and should be stricken from the record. One can't perform any work with a dozer on a surface mine in less than a 2 to 1 slope even in a production shot.

18. Page 86, item 27.13 (e) how would the SCSR's be protected from extreme temperatures? Should one build a house to store them?

19. Page 91 31.3 (a) there should be exceptions in offices and equipment for hard hats and boots also from offices

20. Page 99 the word safety lamp should be removed from 56-3-47 title

21. Page 100. 56-3-48 mine map material has a lot of useless information that is now required to be kept at the mine. Should be streamlined and not have the same requirements for underground mine mapping incorporated.

3.4 Absence of law ... This could be construed as persons or operating companies can still be held liable for instances in which no law or regulation exist. This opens a door to frivolous law suits accounting for thousands if not millions in costs causing businesses to cease and loss of tax revenues to the State.

3.7 Barricaded is a term not normally associated for plants, but for underground and as a last measure to protect lives. Also a term used on surfaces to break rock and expose coal beds. I see no benefit or meaning to this in plants. The intent of this meaning is already included in machinery components will be guarded to prevent injuries should components fail, break, and cause a struck by injury.

3.32 "Other duly authorized representative of the miner workers" a violation of the Taft Hartley Act Elected Labor Representation"

3.42 Trailing cables throughout the mining sector is recognized as Medium and High voltage cables supplying power to mobile equipment. This regulation should be defined as such to eliminate any misunderstandings on cables or power cords

3.49 Define work??? If a person is assigned to enter data in a computer at a plant could this be considered work? Specify work or eliminate "work of employees who is acting pursuant to such specific designation and instruction. This may sound unreasonable but elsewhere in this proposal I see that this could be misunderstood and a improper judgment made.

3.52 Working Place - Again this is a subject that could be misunderstood and improperly judged. Again in this proposal corrective action taken on items could be unnecessary and costly. Specify where coal is being cleaned, washed, sized, blended, and so on Don't be vague.

7.1 This regulation can be understood as any persons working at plants including administrative office workers. According to the way this is written those persons on also have to gain a certificate in order to work.

7.4 This deals with persons who are engaged in the day to day duties of operating plants. Consider a technical type person, one learning the operations of plants, and also wishing to become certified. That person or others similar may take longer than 8 months to gain a certificate.

7.6 Should include persons with or have gained experience and knowledge in cleaning, washing, sizing, blending, and loading for transport.

8.4 Should not specify distances in feet but be similar to 9.11(f) - Shall be restricted to locations where it will not cause an explosion or fire.

8.10-15 Check In and Check Out, a term recognized nationwide for Underground Mining which in itself is dynamic and constantly changing. Plants are not as dynamic as underground and very seldom changes. Plant personnel are always able to communicate by radio and therefore can always relay their location to others. Check In and Out serves only the purpose of cost due to extra personnel and not safety. Should be eliminated from these regulation

8.16 Should consider adding compressed air or oxygen as both are now available.

8.17 Preshift examination - I do not feel that this examination is

needed in plants due to their almost never changing condition as opposed to underground or surface which is always changing. However, if this wins appraisal and implemented, the definition of work should be addressed as this could be misunderstood. Specify where washing, cleaning, sizing, and so forth is being done and not in idle areas.

8.18 A good example of using an underground regulation to enhance the size of this proposed regulation.

8.20 De-energizing devices should be provided where persons have access. It is pointless to require devices on both sides of belts particularly if only one access is available.

9.10 (c) Too vague and easily misunderstood as all cables requiring tested insulated gloves. Should specify High Voltage cables.

12.1 (a) Since caps must be maintained on oxygen bottles 12.3(a) the portion of oily gloves and hands free of petroleum products should be stricken. Cap serves the purpose of protecting the valves from accidental rupture and grease and oil deposits.

12.2 (a) Should not specify distance but same guide lines as 9.11(f) - Shall be restricted to locations where it will not cause an explosion or fire.

(b) Should consider persons with reading impairments or person who do not speak or read English. Signs should convey the message No Smoking, Matches, or Open Flames. Citations have been written on signs saying SCSR instead of Self Contained Self Rescuers. Don't want a repeat of this misunderstanding

12.5 To vague with term adequate - Should be stricken and read Fire Protection shall be provided

12.5d-g Included in training 12.4(a) No need for these items in regulations

12.7 A better definition is needed to prevent misunderstanding Plants are considered Dusty it would be easily judges that no dust should be present when welding and cutting is performed

13.1 Too vague and easily misunderstood by definition of short period. What is a short period 5 minutes, 60 minutes? Should strike all but content other than "Dust shall be controlled by use of dust collectors, other approved means, or by respiratory equipment."

14.1 Pre ops approved by director - This would be too cumbersome not only on coal operators but the director also approving a simple form as Pre Ops. If adamant specify what is needed in a pre op so that all operations are the same.

14.3 (c) More is needed... Center Sections must be greased so equipment operates safely. Should specify that equipment is reasonably free of combustible material at heat generating sources

14.18 What is the ANSI standard on stationary grinding machines? It

would be more meaningful to let people know the ANSI standard rather than just refer to it.

Definitions

3.4 Approved- By who and or what? The definition is vague and needs to be explained in more detail.

3.32 Interested Person- Interested persons opens up the world to participation and who decides which group or person is interested. Groups who have no interest in a particular operation could use this to make their presence in an environment where they have had no presence or interest before.

56-16-8

8.4 Smoking-Even though Surgeon General has determined that smoking is hazardous to your health. This provision which prohibits smoking within 150 feet of so many different areas will be nearly impossible to enforce. A more sensible regulation would be to prohibit smoking in coal preparation facility or load out and where no Smoking signs are posted.

8.06No Working Alone- Need more definition, a hazardous condition could be where any coal truck travels or where the road is wet or excessively dusty. Does a radio count for communications with others if it does then this need not be in the regulation since everyone is to be provided a means of communications.

8.10The requirement for a Check/in Check/out system will be totally unmanageable. To track each person entering the property and record their whereabouts would require the addition of designated entryways and persons to man them due to the size of the properties regulated. Preparation plants and Loadout facilities are not like an underground mine where a person enters and leaves through a limited number of places. Each employee or contractor may not need to report to a central location where they can check in and out. This is an example where the addition of employees to track and check was not included in a cost estimate.

8.12- Two way communications has become commonplace at most Prep and Loadout facilities. The area covered at the facilities necessitates communications with employees. The proposed regulations require the

company, to provide ALL individuals performing work at the facilities with two way communications... Due to the fluctuation in the number of contractors, trucks and other workers provided this would be an enormous expense, when a majority of these individuals have vehicles equipped with CB radios for communications. Tracking them would be impossible and again this expense was not considered in any cost estimate.

8.13 Locating individuals on the surface of a facility is unnecessary since there are only limited amounts of roadways to travel. Requiring a two hour check in, just ties up another employee to track workers which is unnecessary. A more sensible regulation would be to have employees note or report where they will be and if they change locations to then notify the office.

8.14 - Same as 8.10

8.17- Talk about an impossible task, it would take an army to perform a preshift examination of most facilities when the current system is working fine. At one time or the other a worker will probably be on each belt, each floor of the Prep Plant or load out, on each road and to predict within three hours the time that these jobs will be performed is of no benefit to the improved safety of employees.

56-16-13 Respiratory Equipment

This cannot be considered a definition or a clear regulation. The enforcement of this regulation is being left up to the sole discretion of individual inspectors. What is a short period? Is 2 minutes short; is 10 minutes a short period?

56-16-14 General

14.1(c) - Imminent Dangers should be better defined. The decision whether or not a condition is an Imminent Danger would be completely Arbitrary. Workers and Supervisors making these types of decisions need guidance on what constitutes and Imminent Danger.

14.1(d) Operating and maintaining equipment to the manufacturer's recommendation would this mean that if the oil is not changed in time a violation will be issued.

1. Page 29 56-3-10 (c)

This would not benefit anyone by requiring to keep records for one year because this is covered with task training.

2. Page 30 10.3

The object is to remove and make safe. If unable to make safe at this time the area in question should be dangered or barricaded until corrective actions can be taken.

3. Page 30 10.5

In order to provide particular dangers for each job it would take someone up-dating each job constantly. This is covered in task training and that record is kept in each employees file as long as they work at that mine.

4. Page 31 3.13

A ground control plan should have to be submitted and not have to be approved. This is Double Enforcement.

5. Page 32 3.13 (c)

Again a ground control plan should only be submitted and not have to be approved. What constitutes highwall failure and safe working conditions? Double Enforcement.

6. Page 33 13.4

What constitutes a slide? It is not defined.

7. Page 33 13.7

Adequately illuminated should also include the use of illumination that is provided by the equipment not only by the use of mobile light plants.

8. Page 35 14.5 (d & e)

This is included in the MSHA Ground Control Plan, both are Double Enforcement.

9. Page 36 15.1 (c)

What are accumulations? This would be an ongoing process each load. Any size spillage could constitute an accumulation.

10. Page 36 15.1 (j)

Another insignificant record to be kept- (maintenance and examination to prevent overheating of the emulsion pump) already covered under the pre-op. exam (kept for 30 days) Double Enforcement

11. Page 38 (i)

How would an operator know if the explosive had been previously frozen?

12. Page 40 15.5 (c)

Why did the 1000' become a magical number? When 500' was a good number with the blaster using his judgment about a blast area.

13. Page 40 (r)

This is included in the MSHA Ground Control Plan. Double Enforcement

14. Page 41 (d)

Once the holes are hooked up then everyone should be pulled back to a safe place beyond the blast area as indicated by the blaster in charge.

15. Page 47 (j)

This may be impracticable to do due to the design of some of the haulroads already in use.

There is no design or criteria for the building of these berms or runaways. Again this would be a judgment call.

16. Page 48 (k)

For a person only hauling coal- why do they need a surface card?
(Concentrate on additional training for existing coal truck drivers)

17. Page 52 Highwall Mining

General Precautions- This information has already been stated in the General Precautions in the Ground Control Plan. Double Enforcement

18. Page 58 (20.11)

To have a plan to restrict unauthorized persons and have it available for review is a waste of paper. This is now asking for a check - in and check -out system for a surface mine. Sometimes there are different access roads into a surface mine.

19. Page 66 (21.10 c)

Any energized cable handled should not be required to be handled with rated gloves. High voltage OK but not low voltage.

20. Page 70 (26.1)

Pre-ops. can be better kept by management due to the fact that operators would not be liable for the records and they would unlikely to keep them. Books are destroyed, lost and misplaced many times when left in equipment. Management now keeps them for inspection for 30 days for examination. Double work.

21. Page 78 (o)

Who is to read and correctly understand the manufactures specifications on all hand tools? Sounds like a job for an attorney (Page 79 (b) has been deleted as it should have been concerning the manufactures specifications on a grinding wheel)

22. Page 78 (26.16 a & b)

Same comment as for #21

23. Page 79 (26.20 c)

Who makes the determination as to what "safe means" is? This is another judgment call that only will be made when someone gets hurt.

1. New Rule 3.74. Why do we need to include Institute of Makers of Explosives in the West Virginia Rules? This is a guideline for the explosives industry and does not apply to surface mining.

2. New Rule 3.86. How will the inspection personnel determine an "extreme slope"?

3. New Rule 9.2. This appears to be a typographical error. The flame safety lamp language should be deleted.

4. New Rule 9.3. This subject is already covered in the task training by MSHA and the CMSP.

5. New Rule 10.1. Active working places needs to be defined.

6. New Rule 10.1c. Do these records need to be kept for one year? Thirty days (like pre-shift equipment exams) should be sufficient. If an employee is off from work and does not attend the safety meeting, is it necessary to schedule another meeting for this employee?

7. New Rule 10.2b. Some surface mines have 50 or more miles of haul-roads. If the foreman is required to examine and record this twice daily, he will be taken away from other important duties including managing the safety practices of their employees.

8. New Rule 10.5. This area is also covered in task and new miner training. The type of instruction the operator is required to provide should be more specific.

9. New Rule 10.6. There has never been a pre-shift exam book prescribed by any director.

10. New Rule 13.1. This rule takes out the specific 15 feet clearance, and is too vague.

11. New Rule 13.3c. Why does the state need a ground control plan? MSHA has one in place and the state has the CMSP. This plan should cover all areas.

12. New Rule 13.3c. This rule also allows for interpretation by the inspector, and all

inspectors will not interpret it the same way.

13. New Rule 13.3d. This rule is also open to interpretation by each inspector. It needs to be specific.

14. New Rule 13.3g. "Safely removed" needs to be specifically defined.

15. New Rule 13.8 MSHA already completely covers this area in their ground control plan. "Safe angle of repose" needs to be clearly defined.

16. New Rule 15.1j. Calibrating these pumps may or may not be necessary. More research needs to be provided by the manufacturer. I cannot find any data when a pump has failed and caused injuries with the type of emulsion products that are used at West Virginia surface mines.

17. New Rule 15.3b. The Office of Miner's Health Safety and Training is trying to force the Surface Mine Industry to certify blasters after the Office of Explosives and Blasting has certified them. The OEB should be required to provide training in the safety of explosives as a part of their OEB certification process. The Office of Miner's Health Safety and Training should leave the Institute of Makers of Explosives guidelines out and write their own safety regulations along with the OEB to cover the State of West Virginia. We have too many rules of the same nature from too many different entities.

18. New Rule 15.3e Would it not be better to just evacuate an area during the approach of a thunderstorm than to take the time to lower the mast on a drill? This could be very time consuming depending on the number of drill steels in the ground.

19. New Rule 15.4q. The foreman already has the duty of inspecting walls during his pre-shift exam. Why would you require him to do it again?

20. New Rule 15.4r. "Dangerously close" needs to be defined.

21. New Rule 15.5c. This rule would not apply if using a remote blast machine. Five hundred feet works well and the cost of lead line is very expensive.

22. New Rule 15.5i&j. This should be included in the certification process, foreman are certified by learning the regulations. Blasters should be also.

23. New Rule 15.6b. This already exists with the OEB and the DEP. Why include it again? Radio traffic on a large surface mine is virtually impossible to control. The signals carry too far. This language would

again allow too much variance in interpretation. What is "silence"?

24. New Rule 17.2d. This rule needs to be more defined. In some areas drainage would be a problem and in conflict with the DEP regulations.

25. New Rule 17.3e. Need to better define "supplemental emergency braking systems." Manufacturers such as Caterpillar and Komatsu may not agree.

26. New Rule 17.4k. Will all coal truck drivers currently working at a surface mine receive a surface mine certification card without any additional training?

27. New Rule 17.6a. Needs to define "designated parking areas". Who would designate these areas?

28. New Rule 17.6c. Is this not already covered in 36-27-13?

29. New Rule 19.1m. Define "safe distance". This is open to interpretation as written.

30. New Rule 19.6l. This rule already exists in the electrical section. Is it necessary to address it again?

31. New Rule 19.6d. Why would you place a person in front of a miner opening beneath the wall when the machine has a detector built onto it? Has there been a case where oxygen deficient air was a problem for a high-wall miner crew?

32. New Rule 20.2. Mine operators are already testing for drug use. Will inspectors be trained in identifying who shall be searched or tested? This may infringe on basic rights.

33. New Rule 20.9. "Convenient location" needs to be defined.

34. New Rule 20.10. What is the safety concern for this rule? Water shortage due to an entrapment at a surface mine is highly unlikely.

35. New Rule 20.11. Define what type plan is needed, such as check in-check out. Who is authorized? This needs to be the same state wide.

36. New Rule 21.6a. This rule change is unclear. "Power wires" needs to be defined.

37. New Rule 21.6g. Needs to be more specific and to define "temporary splice".

38. New Rule 21.7h. This rule is already covered under 28.8f. (National Electric Code)

39. New Rule 21.10c. Why do surface miners need insulated gloves when handling trailing cables, if underground miners do not?

40. New Rule 21.11h. Why?

41. New Rule 26.1a. Why? It has always been made available in the mine

office for the inspector to review.

42. New Rule 26.1d. Why? The manufacturers' instructions! It would be nearly impossible to have this for every tool.

43. New Rule 26.2b. This rule is unclear. What is a "normal work cycle"?

44. New Rule 26.4d. "Mobile equipment" needs defined. Is it mobile equipment if it is on wheels?

45. New Rule 26.10e. What is meant by "ventilated by mechanical means"? Is a fan sufficient or an open window? They are both mechanical means.

46. New Rule 26.15o. The manufacturers do not spell out specific uses for their equipment. They only supply basic operating information.

47. New Rule 26.16a. The "rated capacity of a jack" is the manufactures specification. What more information would you need?

48. New Rule 26.17a. Why not just say "approved eye protection"?

49. New Rule 26.21. More information needs to be gathered here. These are areas that should not be addressed with opinions and good intentions. What is an "extreme slope"? Who (such as an engineer) may be competent to decide the angles? What about when an excavator must be used on slopes? They do not have ROPS or FOPS protection. This is a manufacturing area of concern.

50. New Rule 27.4d. This is another redundant rule. It is already covered with the pre-shift examination by the foreman.

51. New Rule 27.13a. "Adequate" needs to be defined.

52. New Rule 27.13e. Why would you store the SCSR at the entrance? If you become trapped, it probably won't be at the entrance. Have there been any recorded accidents to warrant this rule?

53. New Rule 29.1a. Why? You do not need both.

54. New Rule 31.3b. The language in this rule must be a typographical error. It does not make sense. You struck out the beginning and started by saying (Provided).

55. New Rule 41.2. This rule should be rewritten to say "under the direct supervision of or in communication with".

56. New Rule 48.1. Mine Maps. We already display these maps in our mine offices. MSHA and the West Virginia DEP both require this. Apparently, the Office of Miner's Health Safety and Training just copied 30CFR 77.1200 words for word; Reference was even made to the district manager. These proposed regulations need to be carefully proofread before any other action is taken.

FW: 2 of 3 Comments to Surface Rules

From: **Elaine Skorich** (elainejd@hotmail.com)

Sent: Thu 7/16/09 8:33 AM

To: Elaine Skorich (elainejd@hotmail.com)

> >>> "Chris R Hamilton" <chamilton@wvcoal.com> 7/15/2009 4:54 PM >>>

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>

> July 15, 2009

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>

> Director Ron Wooten

>

> WV Office of Miners' Health, Safety and Training

>

> 1615 Washington Street East

>

> Charleston, WV 25311

>

>

>

> RE: Comments to Title 56, Series 3 Proposed Rules Governing The Safety Of Those
Employed In And Around Surface Mines in West Virginia

>

>

>

> Dear Director Wooten:

>

> Please accept the following comments on behalf of the West Virginia Coal Association to
the above set of proposed administrative rules and regulations.

>

>

>

> We offer the following general comments to the proposed rules:

>
>
>

> 1. Initially, we question the underlying need or desirability of the proposed rule changes and new provisions of law contained therein. We would observe for the record that these changes were not advanced to the State Board of Coal Mine Health & Safety or the Legislature for their consideration. Nor was any safety surface concern of a "surface" origin raised with either the Board or Legislature.

>

> 2. We also question whether adequate authority exist for the Agency to unilaterally propose and promulgate new safety standards, new miner certifications and training requirements. It would appear that this rule making is in conflict with the role and statutory authority of the WV Board of Coal Mine Health and Safety and the WV Board of Miner Training, Education & Certification.

>

> 3. Additionally, we note for the record that the agency neglected to analyze the fiscal impact of these proposed requirements on the mining industry. We submit for your consideration, that the fiscal impact will be significant in both the outlay of new capital and in dedicating additional resources towards compliance demands necessitated by this rule-making.

>

> Our specific comments to the proposed rule are contained on the following pages.

>

>

>

> Sincerely,

>

>

>

> Chris Hamilton

>

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> Comments to Title 56, Series 3 Proposed Rules Governing The Safety Of Those Employed In And Around Surface Mines in West Virginia (two of three)

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>
> TITLE 56
>
> LEGISLATIVE RULES
>
> OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING
>
> SERIES 3
>
> RULES AND REGULATIONS GOVERNING THE SAFETY OF
>
> THOSE EMPLOYED IN AND AROUND SURFACE MINES IN WEST VIRGINIA
>
> NOTE: These proposed regulations need to be reviewed
>
> and rewritten. There are inconsistencies and many undefined
>
> terms. Many of the requirements are open to wide interpretation
>
> on the part of all concerned with them This makes strict
>
> compliance nearly impossible. There are some good and
>
> necessary provisions included here, but suggest these regulations
>
> be re-thought and re-written.
>
> NOTE: There are several references to the
>
> manufacturer's specifications and manuals. The manufacturer's
>
> specifications and manuals are put together to limit the
>
> manufacturer's liability and should not be codified as law.
>
> §56-3-1. General.
>

- > 1.1. Scope. --These rules govern safety of employees in and around mines.
- >
- > 1.2. Authority. --W. Va. Code § 22-6-4 22A-1-6 and 22A-1-38
- >
- > 1.3. Filing Date. --June 2, 2009
- >
- > 1.4. Effective Date. --_____
- >
- > 1.5. Applicability. --These regulations shall extend to all surface mining operations. These
- >
- > regulations shall not apply to any utility or railroad having facilities in the vicinity of surface mining
- >
- > operations unless such utility or railroad is also the operators of such surface mining operations.
- >
- > 1.6. Other law applicable. --All provisions of the mining law of this state, specifically Chapter 22A,
- >
- > Articles 2 1 and 2 of the West Virginia Code, are applicable to surface mining, except to the extent that
- >
- > these regulations cover the specific requirement, and except to the extent that the context of a specific
- >
- > provision would render its applicability totally inappropriate to surface mining.
- >
- > §56-3-2. Effect of Law and Regulations.
- >
- > 2.1. These regulations shall have the effect of law and violations shall be deemed a violation of law
- >
- > and so cited with the same effect as law. All provisions of Article 1, Chapter 22A of the West Virginia
- >
- > Code relative to enforcement are applicable to the enforcement of these regulations.
- >
- >
- >
- > §56-3-3. Definitions.
- >
- > 3.1. "Surface Mine" shall mean all areas surface mined or being surface mined as well as

adjacent

>

> areas ancillary to the operations, together with preparation and processing plants;
storage areas and

>

> haulageways, roads, shops and trails.; which are covered by the provisions of Chapter 20,
Article 6 of

>

> the Code and coal prospecting subject to Section 8, Article 6, Chapter 20 of the Code.
"Surface Mine"

>

> for the purpose of these regulations shall not mean the surface operations connected
with an

>

> underground coal mine.

>

> 3.2. Department: The term "Department" shall mean the state department of energy
Office of

>

> Miners' Health, Safety and Training provided for in Section 2 1, Article 1 of Chapter 22A
of the West

>

> Virginia Code.

>

> 3.3. Director of the Department of Energy Office of Miners' Health, Safety and Training:
The term

>

> "Director of the Department of Energy Office of Miners' Health, Safety and Training" shall
mean the

>

> Director of the department of energy office of miners' health, safety and training
provided for in Chapter

>

> 22A, Article 1, Section 3, of the West Virginia Code, and is synonymous with the term
"Chief of the

>

> Department of Energy".

>

> 3.4. The term "Inspector" shall mean surface mine inspector employed by the Department
of Energy

>

> Office of Miners' Health, Safety and Training.

- >
- > 3.5. Mine Inspectors' Examining Board: The term "Mine Inspectors' Examining Board" shall mean
- >
- > the mine inspectors' examining board provided for in Section 12 Article 9 of Chapter 22A of the West
- >
- > Virginia Code.
- >
- > 3.6. Board of Appeals. --The term "Board of Appeals" shall mean the Board of Appeals as provided
- >
- > for in Section 31 Article 5 of Chapter 22A of the West Virginia Code.
- >
- > 3.7. Agent. --the term "Agent" means any person charged with the responsibility for the operations
- >
- > of all or a part of a surface mine or the supervision of the miners on a surface mine.
- >
- > 3.8. Operator. --The term "Operator" shall mean any firm, corporation, partnership or individual
- >
- > operating any surface coal mine or part thereof, or engaged in the construction of any facility associated
- >
- > with a coal mine.
- >
- > 3.9. Surface Miner. --the term "Surface Miner" shall mean any individual working on or around a
- >
- > surface mine. who is employed by the operator.
- >
- > 3.10. Person. --The term "Person" shall mean any individual, partnership, association, corporation,
- >
- > firm, subsidiary of a corporation or other organization.
- >
- > 3.11. Superintendent. --The term "Superintendent" shall mean the person who shall have, on behalf
- >
- > of the operator, immediate supervision of one (1) or more mines.
- >

> 3.12. Mine Foreman. --The term "Mine Foreman" shall mean the certified person whom the

>

> operator or superintendent shall place in charge of the workings of the surface mine and of the persons

>

> employed thereon.

>

> 3.13. Assistant Mine Foreman. --The term "Assistant Mine Foreman" shall mean a certified person

>

>

>

> designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of the

>

> persons employed therein.

>

> 3.14. Supervisor. --The term "Supervisor" shall mean a superintendent, mine foreman, assistant mine

>

> foreman, or any person specifically designated by the superintendent or mine foreman to supervise work

>

> of employees and who is acting pursuant to such specific designation and instructions.

>

> 3.15. Interested Persons. --The term "Interested Persons" shall include the operator, members of any

>

> mine safety committee at the mine affected and other duly authorized representative of the mine workers

>

> and Department of Energy the Office of Miners' Health, Safety and Training.

>

> 3.16. Certified Electrician. --The term "Certified Electrician" shall mean any person who is qualified

>

> as a mine electrician and who has passed an examination given by the Department of Energy Office of

>

> Miners' Health, Safety and Training, or has at least three (3) years of experience in performing electrical

- >
- > work underground in a coal mine, in the surface work area of an underground coal mine, in a surface
- >
- > coal mine, in a noncoal mine, in the mine equipment manufacturing industry, or in any other industry
- >
- > using or manufacturing similar equipment, and has satisfactorily completed a coal mine electrical
- >
- > training program approved by the Department of Energy Office of Miners' health, Safety and Training.
- >
- > 3.17. Certified Person. --The term "Certified Person" when used to designate the kind of person to
- >
- > whom the performance of a duty in connection with the operation of a mine shall be assigned, shall
- >
- > mean a person who is qualified under the provisions of this law to perform such duty.
- >
- > 3.18. Accident. --The term "Accident" shall mean any premature ignition, fire or injury, or death
- >
- > other than natural causes of any person.
- >
- > 3.19. Imminent Danger. --The term "Imminent Danger" means the existence of any condition or
- >
- > practice on a surface mine which could be expected to cause death or serious physical harm before such
- >
- > condition or practice can be abated.
- >
- > 3.20. Qualified Person. --The term "Qualified Person" shall mean a person who has completed an
- >
- > examination and is considered qualified on record by the Department of Energy Office of Miners'
- >
- > Health, Safety and Training.
- >

> 3.21. Approved. --The term "Approved" shall mean in strict compliance with mining law, or, in the

>

> absence of law, accepted by a recognized body or organization whose approval is generally recognized

>

> as authoritative on the subject.

>

> 3.22. Berm. --Means a pile or mound of material or equivalent capable of restraining a vehicle.

>

> 3.23. Work of Preparing the Coal. --The term "Work of Preparing Coal" shall mean the breaking,

>

> crushing, sizing, cleaning, washing, drying, mixing, storing, loading, and removing of over-burden from

>

> the top of the coal for the purpose of extracting coal.

>

> 3.24. Active Underground Mine Working. --The term "Active Underground Mine Working" shall

>

> mean all places in a mine that are ventilated and inspected regularly.

>

> 3.25. Abandoned Underground Mine Workings. --The term "Abandoned Underground Mine

>

> Workings" shall mean excavation, either caved or sealed, that is deserted and in which further mining is

>

> not intended, or open workings which are ventilated and not inspected regularly.

>

>

>

> 3.26. Working Place. --The term "Working Place" shall mean all areas in or about a surface mine

>

> where persons are working.

>

> 3.27. Detonator. --The term "Detonator" shall mean blasting caps, electrical blasting caps, and

>

- > nonelectric delay blasting caps.
- >
- > 3.28. Nonelectric delay blasting caps. --The term "Nonelectric Delay Blasting Caps" shall mean a
 - >
 - > blasting cap with an intergral delay element in conjunction with and capable of being detonated by a
 - >
 - > detonation impulse or signal from a miniaturized detonating cord and does not require the use of electric
 - >
 - > energy to function.
 - >
- > 3.29. Primer. --The term "Primer" shall mean a cartridge or container of explosives into which a
 - >
 - > detonator or detonating cord is inserted or attached, and whose purpose is to initiate the main explosive
 - >
 - > charge.
 - >
- > 3.30. Detonating cord. --The term "Detonating Cord" shall mean a flexible cord containing a center
 - >
 - > core of high explosives to detonate other explosives with which it comes in contact.
 - >
- > 3.31. Cast primer or booster. --The term "Cast Primer or Booster" shall mean a case or pressed
 - >
 - > block or solid high explosives (i.e., not nitroglycerin sensitized) which is normally used to detonate
 - >
 - > insensitive or noncapsensitive explosives.
 - >
- > 3.32. Safety fuse. --The term "Safety Fuse" shall mean a flexible cord containing an internal burning
 - >
 - > medium by which fire or flame is conveyed at a continuous and uniform rate from the point of ignition
 - >
 - > to the point of use, usually a blasting cap.
 - >

> 3.33. Detonating cord millisecond delay connectors. --The term "Detonating Cord Millisecond Delay

>

> Connectors" shall mean nonelectric shot interval (millisecond) delay devices for use in delaying blasts

>

> which are surface initiated by detonating cord.

>

> 3.34. Blasting agent. --Means any material consisting of a mixture of a fuel and oxidizer which: An

>

> explosive material which meets prescribed criteria for insensitivity to initiation.

>

> (a) is used or intended for use in blasting; For storage, Title 27, Code of Federal Regulations,

>

> Section 55.11 defines a blasting agent as any material or mixture, consisting of fuel and oxidizer

>

> intended for blasting , not otherwise defined as an explosive: provided, that the finished product, as

>

> mixed for use or shipment, cannot be detonated by means of a No. 8 test blasting cap (detonator) when

>

> unconfined (ATF Regulation).

>

> (b) is not classified as an explosive by the Department of Transportation; For transportation,

>

> Title 49 CFR, Section 173.50, defines Class 1, Division 1.5 (blasting agent) as a substance which has

>

> mass explosion hazard but is so insensitive that there is very little probability of initiation or of transition

>

> from burning to detonation under normal conditions in transport.

>

> (c) passes all United States DOT tests defining blasting agent, including insensitivity to a No. 8

>

> blasting cap in accordance with CFR49, 173.114a.

- >
- > 3.35. Blasting area. --Shall mean the area near blasting operations in which concussion or flying
- >
- > material can reasonably be expected to cause injury.
- >
- > 3.36. Explosives. --The term "Explosives" shall mean any or all of the following, but is not limited
- >
- >
- >
- > to: water gel slurries, dynamites, permissibles, pellet powder, blasting caps, electric blasting caps,
- >
- > nonelectrical delay blasting caps, electronic computer chip blasting caps, cast primer and boosters,
- >
- > detonating cord, and detonating cord delay connections.
- >
- > 3.37. Electric blasting caps. --The term "Electric Blasting Caps" shall mean instantaneous electric
- >
- > blasting caps and all types of delay electric blasting caps.
- >
- > 3.38. Armored cable. --The term "Armored Cable" shall mean a cable provided with a wrapping of
- >
- > metal, usually steel wires or tapes, primarily for the purpose of mechanical protection.
- >
- > 3.39. Branch circuit. --The term "Branch Circuit" shall mean any circuit, alternating current or direct
- >
- > current, connected to and leading from the main power lines.
- >
- > 3.40. Cable. --The term "Cable" shall mean a standard conductor (single conductor cable) or a
- >
- > combination of conductors insulated from one another (multiple conductor cable).
- >
- > 3.41. Circuit breaker. --The term "Circuit Breaker" shall mean a device for interrupting a circuit
- >

- > between separable contacts under normal or abnormal conditions.
- >
- > 3.42. Delta connected. --The term "Delta Connected" shall mean a power system in which the
- >
- > windings or transformers or S.C. generators are connected to form a triangular phase relationship, and
- >
- > with phase conductors connected to each point of the triangle.
- >
- > 3.43. Effectively grounded. --The term "Effectively Grounded" is an expression which means
- >
- > grounded through a grounding connection of sufficiently low impedance (inherent or intentionally
- >
- > added or both) so that fault grounds which may occur cannot build up voltages in excess of limits
- >
- > established for apparatus, circuits or systems so grounded.
- >
- > 3.44. Flame-resistant Cable, Portable. --The term "Flame-resistant Cable, Portable" shall mean a
- >
- > portable flame-resistant cable that has passed the flame test of the Federal Bureau of Mines. Mine Safety
- >
- > and Health Administration.
- >
- > 3.45. Ground or grounding conductor (mining). --The term "ground or Grounding Conductor
- >
- > (mining)", also referred to as a safety ground conductor, safety ground, and frame ground, shall mean a
- >
- > metallic conductor used to connect the metal frame, or enclosure or any equipment, device or wiring
- >
- > system with a mine track or other effective grounding medium.
- >
- > 3.46. Grounded (earthed). --The term "grounded (earthed)" shall mean that the system, circuit, or

- >
- > apparatus referred to is provided with a ground.
- >
- > 3.47. High voltage. --The term "High Voltage" shall mean voltages of more than one thousand
- >
- > (1,000) volts.
- >
- > 3.48. Lightning Arrestor. --The term "lightning arrestor" shall mean a protective device for limiting
- >
- > surge voltage on equipment by discharging or by passing surge current, it prevents continued flow or
- >
- > follow current to ground and is capable of repeating these functions as specified.
- >
- > 3.49. Low voltage. --The term "low voltage" shall mean up to and including six hundred sixty
- >
- > (660) volts.
- >
- >
- >
- > 3.50. Medium voltage. --The term "medium voltage" shall mean voltages from six hundred sixtyone
- >
- > (661) to one thousand (1,000) volts.
- >
- > 3.51. Mine Power Center or Distribution Center. --The term "mine power center or distribution
- >
- > center" shall mean a combined transformer or distribution unit, complete within a metal enclosure from
- >
- > which one (1) or more low-voltage power circuits are taken.
- >
- > 3.52. Neutral (derived). --The term "neutral (derived)" shall mean a neutral point or connection
- >
- > established by the addition of a "zigzag" or grounding transformer to a normally underground power
- >

> system.

>

> 3.53. Neutral Point. --The term "neutral point" shall mean the connection point of transformer or

>

> generator windings from which the voltage to ground is nominally zero (0), and is the point generally

>

> used for system groundings in wye-connected A.C. power system.

>

> 3.54. Portable (Trailing) Cable. --The term "portable (trailing) cable" shall mean a flexible cable or

>

> cord used for connecting mobile, portable or stationary equipment in mines to a trolley system or other

>

> external to a source of electrical energy where permanent mine wiring is prohibited or is impracticable.

>

> 3.55. Wye-Connected. --The term "wye-connected" shall mean a power system connection in which

>

> one (1) end of each phase windings or transformers or A.C. generators are connected together to form a

>

> neutral point, and a neutral conductor may or may not be connected to the neutral point, and the neutral

>

> point may or may not be grounded.

>

> 3.56. ZigZag Transformer (Grounding Transformer). --The term "zigzag transformer (grounding

>

> transformer)" shall mean a transformer intended primarily to provide a neutral point for grounding

>

> purposes.

>

> 3.57. Brake systems:

>

> (a) Service brake system - the primary brake system used for stopping a vehicle.

>

- > (b) Emergency stopping system - the system used for stopping a vehicle in the event of any
 - >
 - > single failure in the service brake system.
 - >
- > (c) Parking system - a system to hold a stopped vehicle in a stationary position.
 - >
- > 3.58. "Barricaded" means to obstruct passage of person, vehicles, or flying materials.
 - >
- > 3.59. Blast controller. - The term "blast controller" shall mean a firing device for electronic
 - >
 - > detonator circuits which may have functions (such as programming, communication, circuit diagnostics,
 - >
 - > etc.) in addition to charging and transmission of the firing command.
 - >
- > 3.60. Blast site. - The term "blast site" shall mean the area where explosive material is handled
 - >
 - > during loading of blast holes, including fifty (50) feet in all directions from the perimeter formed by
 - >
 - > loaded holes.
 - >
- > 3.61. Blasting accessories. - The term "blasting accessories" shall mean non-explosive devices and
 - >
 - > materials used in blasting, such as, but not limited to, cap crimpers, tamping bags, blasting machines,
 - >
 - > blasting galvanometers, and cartridge punches.
 - >
 - >
 - >
- > 3.62. Case insert. - The term "case insert" shall mean a set of printed, precautionary instructions,
 - >
 - > including the IME "Instructions and Warnings" which is included in a case of explosive materials.
 - >
- > 3.63. Electrical Storm. - The term "electrical storm" shall mean an atmospheric disturbance
 - >

> characterized by intense electrical activity producing lightening strikes and strong electric and magnetic

>

> fields. Synonymous with a thunderstorm and a lightening storm.

>

> 3.64. Electronic detonator. - The term "electronic detonator" shall mean a detonator that utilizes

>

> stored electrical energy as a means of powering an electronic timing delay element/module and that

>

> provides initiation energy for firing the base charge.

>

> 3.65. Extraneous electricity. - The term "extraneous electricity" shall mean electrical energy, other

>

> than actual firing current or the test current from a blasting galvanometer, that is present at a blast site

>

> and that could enter an electric blasting circuit. It includes stray current, static electricity, RF

>

> (electromagnetic) waves and time varying electric and magnetic fields.

>

> 3.66. Firing/blasting device. - The term "firing device" or "blasting device" shall mean a device

>

> capable of charging and transmitting a fire command to an electronic detonator circuit. Also, a device

>

> capable of detonating an electric or nonelectric detonator.

>

> 3.67. Misfire - A blast or specific borehole that failed to detonate as planned. Also, the explosive

>

> materials that failed to detonate as planned.

>

> 3.68. Barrier - Material objects that separates, keeps apart or demarcates in a conspicuous manner

>

> such as cones, stakes and warning tape, used in conjunction with warning signs.

>

- > 3.69. Borehole - A hole drilled in the material to be blasted, for the purpose of containing an
 - >
 - > explosive charge, also called Blasthole or Drillhole.
 - >
- > 3.70. Downline - The line extending down the borehole used to carry energy to the detonating cap.
 - >
- > 3.71. Emulsion - An explosive material containing substantial amounts of oxidizer dissolved in
 - >
 - > water droplets, surrounded by an immiscible fuel, or droplets of an immiscible fuel surrounded by water
 - >
 - > containing substantial amounts of oxidizer.
 - >
- > 3.72. Firing/Lead line - The wires connecting electric or electronic blasting circuit(s) to the
 - >
 - > electrical power source/blast controller. In cases of non electrical initiation systems, the line that
 - >
 - > connects the blasting circuit(s) to the blasting initiating device.
 - >
- > 3.73. Hot Holes - Boreholes drilled in the overburden overlaying a burning coal seam which
 - >
 - > increases the temperature of the boreholes.
 - >
- > 3.74. Institute of Makers of Explosives (IME) - A non-profit safety-oriented trade association
 - >
 - > representing producers of commercial explosive materials in the United States and Canada and
 - >
 - > dedicated to safety in the manufacture, transportation, storage, handling and use of explosive materials.
 - >
- > 3.75. Loaded Hole - A borehole containing explosive material(s).
 - >
- > 3.76. Loading - Placing explosive material in a borehole or against material to be blasted.
 - >
 - >

- >
- > 3.77. Overburden - Material of any nature laying on top of a deposit of coal which is to be mined.
- >
- > 3.78. Radio Frequency Energy - The energy radiated as electromagnetic waves in the radio
- >
- > frequency spectrum.
- >
- > 3.79. Radio Frequency Transmitter - An electronic transmitting device which radiates radio
- >
- > frequency waves. The transmitting device may be fixed (stationary) or mobile, and includes car
- >
- > telephones, citizens band radios, AM and FM radio transmitters, television transmitters and radar
- >
- > transmitters.
- >
- > 3.80. Shot or Round - A group of loaded boreholes fired, or intended to be fired in a continuous
- >
- > sequence with the application of initiating energy.
- >
- > 3.81. Shock Tube - A small diameter plastic tube used for initiating detonators. It contains only a
- >
- > limited amount of reactive material so that the energy that is transmitted through the tube by means of a
- >
- > detonation wave is guided through and confined within the walls of the tube.
- >
- > 3.82. Slurry - An explosive material containing substantial portions of a liquid, oxidizers and fuel,
- >
- > plus a thickener.
- >
- > 3.83. Static Electricity - Electric charge at rest on a person or object. It is most often produced by
- >
- > the contact and separation of dissimilar insulating materials.

- >
- > 3.84. Stray Current - A flow of electricity outside an insulated conductor system.
- >
- > 3.85. Wet Holes - Boreholes that contain water.
- >
- > 3.86. Extreme slope - An extreme slope is any slope greater than a 2:1 slope.
- >
- > 3.87. Competent person - means a person designated by the mine operator or independent contractor
- >
- > who has a minimum of twenty-four (24) months experience at a surface mine and is capable of
- >
- > identifying existing and predictable hazards in the surroundings or working conditions which are
- >
- > unsanitary, hazardous or dangerous to employees, and who has authorization to take prompt corrective
- >
- > measures to eliminate them.
- >
- > 3.88. Approved Detector - means any detector, approved by MSHA, to test for methane gas, oxygen
- >
- > deficiency, or other harmful gases.
- >
- > xxx
- >
- > §56-3-27 10. Mine Foreman and Assistant Mine Foreman; Daily Inspection of Working Places;
- >
- > Records.
- >
- > 27 10.1. Pre shift examination.
- >
- > (a) Prior to the beginning of any shift the mine foreman or assistant mine foreman shall visit and
- >
- > carefully examine highwalls in the working area and spoil piles for cracks, loose materials, overhanging
- >
- > ledges, and other dangerous conditions all active working places of the surface mine.

- >
- >
- >
- > (b) Upon completion of the examination, the foreman shall record the results in a book
- >
- > prescribed by the director of the Department of Energy Office of Miners' Health, Safety and Training, at
- >
- > the designated station at the surface mine before persons enter the working area of the mine. Before the
- >
- > beginning of any shift upon which they shall perform supervisory duties, the mine foreman or his
- >
- > assistant shall review carefully and countersign all books and records of the prior shift reflecting the
- >
- > conditions and the areas under their supervision, exclusive of equipment logs, which the operator is
- >
- > required to keep.
- >
- > NOTE: Problem here with reviewing and signing all
- >
- > books and records PRIOR to shift? Logistics problem.
- >
- > (c) The operator shall have weekly safety meetings with all employees which shall provide
- >
- > training in the working practices and conditions at the mine and rules and regulations applicable thereto.
- >
- > A record of the topic of the weekly safety meetings shall be kept and signed by all people in attendance.
- >
- > This record shall be kept for one (1) year and made available to a representative of the Director upon
- >
- > request.
- >
- > NOTE: Is there a problem here requiring the attendees to
- >
- > sign that they were in attendance? What if someone refuses to

- >
- > sign? Can they be found in violation? Disciplined by the
- >
- > company for violating the regulation?
- >
- > (a) The mine foreman or assistant mine foreman shall examine all working places in the pit at the
- >
- > surface mine under his supervision for hazards at least once every four (4) hours during each working
- >
- > shift, or more often if necessary for safety. Upon completion of the examination(s) the foreman shall
- >
- > record the results and time(s) in a book prescribed by the Director. The mine foreman shall also, each
- >
- > day, read carefully and countersign with ink or indelible pencil all reports entered in the record book by
- >
- > the mine foreman or his assistants on the prior shift, and he shall supervise the foreman or his assistants.
- >
- > NOTE: Can this be done from "the truck" or does the
- >
- > foreman have to return to a central location/ office to sign? Can
- >
- > the examination be called in by radio or phone like with a UG
- >
- > fireboss call-out? Logistics problem.
- >
- > 27 10.2. On-shift examination.
- >
- > (b) It shall further be the duty of the mine foreman or the assistant mine foreman to carefully
- >
- > examine the haulage roads in the pit area at the surface mine for slips, cracks, overhanging trees and
- >
- > other dangerous conditions during his pre-shift and on-shift examinations.
- >
- > 27 10.3. Dangerous conditions. --Should the mine foreman or his assistants find a place

to be in a

>

> dangerous condition, they shall not leave the place until it is made safe, or shall remove the persons

>

> working therein until the place is made safe by some competent person designated for that purpose.

>

> He shall also record any dangerous conditions and practices found during his examination in a book

>

> provided for that purpose.

>

> 27 10.4. Close deep operations. --When a surface mine operations is known to be close to an active

>

> underground mine, the mine foreman or superintendent shall give the official representative of the

>

>

>

> underground mine at least twelve (12) hours notice in advance of any contemplated blasting that may

>

> endanger the safety of persons employed in the underground mine.

>

> 27 10.5. Instructions. --The mine foreman shall see that every person employed to work at such mine

>

> shall, before the beginning work therein, be instructed in the particular dangers incident to his work in

>

> such mine, and be furnished a copy of the state surface mining rules and regulations. A record of such

>

> instructions shall be kept and made available upon request by an authorized representative of the

>

> Director.

>

> NOTE: Problem here with record keeping. Is this an attempt to mimic the MSHA 5000-23

>

- > form and record keeping? If so, it needs to be structured that way. This may mean initial training
- >
- > but can be read to mean every instruction and every task the person is instructed to do.
- >
- > 27 10 .6. Records of examinations.
- >
- > (a) All violations or hazardous conditions and the action taken to correct such violations or
- >
- > conditions including the pre-shift and on-shift examinations shall be recorded with ink or indelible
- >
- > pencil in a book prescribed by the Director of the Department of Energy Office of Miners' Health,
- >
- > Safety and Training, and kept for such purpose at a place at the surface mine designated by mine
- >
- > management at the mine office for a period of one year. All records of daily, and weekly reports as
- >
- > prescribed herein, shall be open for inspection by interested persons, and the record book shall be kept
- >
- > for a period of one (1) year.
- >
- > 27 10.7. It shall be the duty of the mine foreman, assistant mine foreman to examine each mine
- >
- > within three (3) hours prior to the beginning of a shift and before any miner on such shift enters the
- >
- > active workings of the mine.
- >
- > 27 10.8. The mine foreman shall give prompt attention to the removal of all dangers reported to him
- >
- > by his assistants, or any other person working in the mine, and in case it is impracticable to remove the
- >
- > danger at once, he shall notify all persons whose safety is menaced thereby to remain

- >
- > area where the dangerous condition exists.

> hours and that do not have a certified mine foreman, the mine operator shall designate a competent

> The name of the designated competent person shall be recorded and such record shall be made available

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>
> XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
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>
> 30 13.1. Loose material removal. --Loose hazardous material shall be stripped for a safe distance

> pit or highwalls, and the loose unconsolidated material shall be sloped to the angle of repose, or barriers,

- >
- >
- >
- > as otherwise provided for in the approved ground control plan.

> bench shall be governed by the type of equipment to be used and the operations to be performed, type of

- >
- > material and height of wall.
- >
- > 30 13.3. Highwall and spoil bank work areas.
- >
- > (a) Each operator shall establish and follow a ground control plan for the safe control of all
- >
- > highwalls, pits and spoil banks which shall be consistent with prudent engineering design and will
- >
- > ensure safe working conditions. The mining methods employed by the operator shall be selected to
- >
- > ensure highwall and spoil bank stability.
- >
- > (b) The ground control plan shall, at a minimum, address the following conditions:
- >
- > i.) Benching;
- >
- > ii.) Pre-splitting of the highwall;
- >
- > iii.) Height of the highwall;
- >
- > iv.) Angle drilling;
- >
- > v.) Loose materials and trees;
- >
- > vi.) Vertical mud seams;
- >
- > vii.) Impounded water;
- >
- > viii.) Adequate water drainage;
- >
- > ix.) The angle of repose of spoil material.
- >
- > NOTE: Development of another plan similar to a roof
- >
- > control plan. This is another way the OMHS&T can take control
- >
- > of an operation through a plan process. There is no provision
- >

- > for resolving disputes in the plan make-up, so the Director has
- >
- > the last word. Revised "when necessary to ensure safety" is
- >
- > highly subjective and open to abuse.
- >
- > NOTE: "not connected with UG Mine" therefore not
- >
- > required for face ups and similar surface construction for UG
- >
- > mine. Need to emphasize.
- >
- > (c) The operator shall submit the ground control plan to the Office of Miners' Health, Safety and
- >
- > Training for approval and such approval shall be obtained prior to implementing the plan.

Windows Live™: Keep your life in sync. Check it out.

FW: 3 of 3 Comments to Proposed Surface Rules

From: **Elaine Skorich** (elainejd@hotmail.com)

Sent: Thu 7/16/09 8:32 AM

To: Elaine Skorich (elainejd@hotmail.com)

> > > "Chris R Hamilton" <chamilton@wvcoal.com> 7/15/2009 4:59 PM > > >

> July 15, 2009

>

>

>

> Director Ron Wooten

>

> WV Office of Miners' Health, Safety and Training

>

> 1615 Washington Street East

>

> Charleston, WV 25311

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> RE: Comments to Title 56, Series 3 Proposed Rules Governing The Safety Of Those
Employed In And Around Surface Mines in West Virginia (3 of 3)

>

>

>

> Dear Director Wooten:

>

> Please accept the following comments on behalf of the West Virginia Coal Association to
the above set of proposed administrative rules and regulations.

>

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>

> We offer the following general comments to the proposed rules:

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> 1. Initially, we question the underlying need or desirability of the proposed rule changes
and new provisions of law contained therein. We would observe for the record that these
changes were not advanced to the State Board of Coal Mine Health & Safety or the
Legislature for their consideration. Nor was any safety surface concern of a "surface" origin
raised with either the Board or Legislature.

>

> 2. We also question whether adequate authority exist for the Agency to unilaterally propose and promulgate new safety standards, new miner certifications and training requirements. It would appear that this rule making is in conflict with the role and statutory authority of the WV Board of Coal Mine Health and Safety and the WV Board of Miner Training, Education & Certification.

>

> 3. Additionally, we note for the record that the agency neglected to analyze the fiscal impact of these proposed requirements on the mining industry. We submit for your consideration, that the fiscal impact will be significant in both the outlay of new capital and in dedicating additional resources towards compliance demands necessitated by this rule-making.

>

> Our specific comments to the proposed rule are contained on the following pages.

>

>

>

> Sincerely,

>

>

>

> Chris Hamilton

>

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>

> TITLE 56

>

> LEGISLATIVE RULES

>

> OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING

>

>

>

> SERIES 3

>

> RULES AND REGULATIONS GOVERNING THE SAFETY OF

>

> THOSE EMPLOYED IN AND AROUND SURFACE MINES IN WEST VIRGINIA

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> §56-3-3. Definitions.

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> 3.1. "Surface Mine" shall mean all areas surface mined or being surface mined as well as adjacent areas ancillary to the operations, together with preparation and processing plants; storage areas and haulageways, roads, shops and trails.; which are covered by the provisions of Chapter 20, Article 6 of the Code and coal prospecting subject to Section 8, Article 6, Chapter 20 of the Code. "Surface Mine" for the purpose of these regulations shall not mean the surface operations connected with an underground coal mine.

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> Comment/Response: "Surface Miner" Will this include preparation plant employees & supervisors?

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> 3.9. Surface Miner. -- the term "Surface Miner" shall mean any individual working on or around a surface mine. who is employed by the operator.

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> Comment/Response: "Surface Miner" Will this include preparation plant employees & supervisors?

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> §56-3-27 10. Mine Foreman and Assistant Mine Foreman; Daily Inspection of Working Places; Records.

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> 27 10.1. Pre shift examination.

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> (a) Prior to the beginning of any shift the mine foreman or assistant mine foreman shall visit and carefully examine highwalls in the working area and spoil piles for cracks, loose materials, overhanging ledges, and other dangerous conditions all active working places of the surface mine.

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> Comment/Response: "All active working places"- Will this include pond building areas, timber cutting or any other ancillary work areas? Should this section include the language - "areas under their supervision"?

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> (b) Upon completion of the examination, the foreman shall record the results in a book prescribed by the director of the Department of Energy Office of Miners' Health, Safety and Training, at the designated station at the surface mine before persons enter the working area of the mine. Before the beginning of any shift upon which they shall perform supervisory duties, the mine foreman or his assistant shall review carefully and countersign all books and records of the prior shift reflecting the conditions and the areas under their supervision, exclusive of equipment logs, which the operator is required to keep.

>

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>

> Comment/Response: Countersign all books and records of the prior shift - The requirement to countersign the books is only indication that the oncoming foreman noted conditions in the book, not that he attest that the books includes all hazards in the field

>

>

>

> (c) The operator shall have weekly safety meetings with all employees which shall provide training in the working practices and conditions at the mine and rules and regulations applicable thereto. A record of the topic of the weekly safety meetings shall be kept and signed by all people in attendance. This record shall be kept for one (1) year and made available to a representative of the Director upon request.

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>

> Comment/Response: Signed attendance list - Signatures by all persons present could necessitate changes in the way conduct our meetings. Attendees could include 50 - 100 employees. It could take an enormous amount of time to sign an attendee's sheet. This could distract employees and direct attention away from the safety topic.

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> 27 10.2. On-shift examination.

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> (a) The mine foreman or assistant mine foreman shall examine all working places in the pit at the surface mine under his supervision for hazards at least once every four (4) hours during each working shift, or more often if necessary for safety. Upon completion of the examination(s) the foreman shall record the results and time(s) in a book prescribed by the Director. The mine foreman shall also, each day, read carefully and countersign with ink or indelible pencil all reports entered in the record book by the mine foreman or his assistants on the prior shift, and he shall supervise the foreman or his assistants.

>

>

>

> Comment/Response: Countersign all books and records of the prior shift - The requirement to countersign the books is only indication that the oncoming foreman noted conditions in the book, not that he attest that the books includes all hazards in the field. Also, we need clarification concerning "and he shall supervise the foreman or his assistants." Also does this mean any where there are people working including haul roads, and if so all he will be able to do is go around checking people and not managing Some of these areas take time to get to with all the other things he has to do.

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> 27 10.5. Instructions. -- The mine foreman shall see that every person employed to work at such mine shall, before the beginning work therein, be instructed in the particular dangers incident to his work in such mine, and be furnished a copy of the state surface mining rules and regulations. A record of such instructions shall be kept and made available

upon request by an authorized representative of the Director.

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> Comment/Response: "Incident to his work" is somewhat in contradiction to an earlier subpart indicating "incident to his exposure." Is this the same as MSHA training where we fill out a 5000-23 form and does it have to be the mine foreman or can it be an instructor?

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> (a) Each operator shall establish and follow a ground control plan for the safe control of all highwalls, pits and spoil banks which shall be consistent with prudent engineering design and will ensure safe working conditions. The mining methods employed by the operator shall be selected to ensure highwall and spoil bank stability.

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> (b) The ground control plan shall, at a minimum, address the following conditions:

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> i.) Benching;

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> ii.) Pre-splitting of the highwall;

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> iii.) Height of the highwall;

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> iv.) Angle drilling;

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> v.) Loose materials and trees;

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- >
- > vi.) Vertical mud seams;
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- >
- >
- > vii.) Impounded water;
- >
- >
- >
- > viii.) Adequate water drainage;
- >
- >
- >
- > ix.) The angle of repose of spoil material.
- >
- >
- >
- > Comment/Response: Ground Control Plan - What are the timelines for submission, approval and revisions? Are the ground control plans renewed yearly? Define "adequate water drainage and vertical mud seams". Who will settle conflicts between the MSHA version and the State version of the Ground Control Plans. What is the point of having two plans? Will other topics or areas of concern be added to the Ground Control Plan? If so, at who's discretion?
- >
- >
- >
- > (c) The operator shall submit the ground control plan to the Office of Miners' Health, Safety and Training for approval and such approval shall be obtained prior to implementing the plan. Any highwall failure that affects the safe working conditions of the surface mine shall be reported to the Office of Miners' health, Safety and Training within twenty-four (24) hours of the time of the failure.
- >
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- >
- > Comment/Response: Any highwall failure - More information is needed concerning the definition of "highwall failure". If there is an unsafe condition in a wall area we barricade it off. Does this mean we have to notify the State?
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> 30 13.7. Night work. -- When surface mining is performed at night, the pits, highwalls, and dump areas in the vicinity of the work shall be adequately illuminated.

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> Comment/Response: What is the definition of adequate illumination?

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> (d) No holes shall be drilled within six (6) feet of the highwall. Drills shall not be positioned near the edge of the highwall where safe egress from the operator's cab cannot be maintained.

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>

> Comment/Response: We need a clarification of "highwall". Is it 10', 50' or 100'? Does this language address the drills position above or below the highwall? What happens if we have the toe out a certain distance that we need to drill closer to break up the rock? This could be a hazard with rocks too large to load. This could cause an uncontrolled shot.

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> (j) Proper maintenance and examinations shall be performed to prevent overheating of the emulsion pump and a record of the examinations shall be kept at the mine for one year and made available to a representative of the Director upon request.

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> Comment/Response: Overheating emulsion pump - At what temperature and for what duration is the emulsion pump assumed to have overheated? How frequent of examination is required?

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> (b) Previously frozen explosives of nitroglycerin base shall not be used. The transportation, storage, handling and use of explosive materials and blasting accessories shall be in accordance with the current Institute of Makers of Explosives Warnings and Instructions. A copy of the current Institute of Makers of Explosives Warnings and

Instructions shall be posted at the mine. All persons involved in the blasting procedure shall be properly trained and familiar with these Warnings and Instructions and a record kept of this training for one (1) year and made available to a representative of the Director upon request.

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> Comment/Response: Warnings and Instructions posted - Where should they be posted?

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> (e) The use of explosives and all handling incident thereto, will be discontinued during the approach of and during thunderstorms and/or electrical storms and all personnel shall be withdrawn from the blast area. When drills are located on a bench with loaded holes, or holes being loaded, masts shall be lowered upon the approach of an electrical storm.

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> Comment/Response: Approaching storms - At what distance of approaching storm? Lowering of masts - Lowering of drill masts may not be practical if the drill is idle or not manned at the time of the storm.

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> (c) No equipment except the drill and explosive truck, other than necessary equipment for road repairs to remove the drill or explosive truck, shall be permitted to work within fifty (50) feet of loaded holes or holes being loaded. Equipment powered by external electrical sources and power cables shall be prohibited from being within one hundred (100) feet of loaded holes or holes being loaded; where such equipment is being used and electrical detonators are being used, stray current test shall be made on the bench prior to commencing the loading of holes, if current is detected, such power cables be moved to a safe distance or the power cables shall be deenergized. This distance of fifty (50) feet shall include the entire column of the loaded hole when equipment is excavating on the same bench level as loaded holes. In cases of emergency, in which the equipment indicated above has malfunctioned and cannot be removed from the area, the blaster and certified foreman shall direct the use of maintenance equipment if required to safely repair and/or remove the disabled equipment from the area. Adequate precautions shall be taken to prevent extraneous electricity from entering an electrical blasting circuit. Electrically-powered equipment and trailing cables shall be prohibited from being within one hundred (100) feet of loaded holes or holes being loaded. When a potential source of extraneous

electricity is present in the general area and electrical detonators are to be used, a stray current test shall be made on the bench prior to commencing loading holes; if current is detected, the source of the extraneous electricity shall be neutralized before loading may begin.

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> Comment/Response: (50) feet shall include the entire column - Would this preclude any coal loading, etc at the base of a wall having loaded holes? Is loading coal considered excavating work to be covered under the (50) foot zone for the entire column of the loaded hole? "When a potential source of extraneous electricity is present in the general area"- This sentence needs an explanation.

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> (q) When loading beneath highwalls, the highwall shall be carefully inspected by the blaster and foreman in charge before beginning the loading process. Persons shall not load boreholes in areas where the highwall is unstable. For those surface mines that do not employ five or more persons in a period of twenty-four hours and that do not have a certified mine foreman, the mine operator shall designate a competent person, as defined in 56 CSR § 3.3.87, to perform the duties of the foreman in charge set forth in this section. The name of the designated competent person shall be recorded and such record shall be made available upon request.

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> Comment/Response: Person shall not load boreholes in areas where the highwall is unstable - Define "unstable".

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> (r) Boreholes shall not be located near the outer edge of highwalls where such location could create a danger of falling over the highwall by persons loading boreholes. Boreholes located dangerously close to the outer edge of the highwall shall not be loaded. Persons loading boreholes shall not work within six (6) feet of the outer edge of the highwall.

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> Comment/Response: 14.5.d states that holes shall not be drilled within 6 feet of the edge of a highwall. Is this "6 feet" referring to the above paragraph of "dangerously close" to the

outer edge of the highwall? The law needs to state that if working closer than 6 feet to the edge, then you must wear a harness and lanyard.

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> (d) All holes or series of holes containing detonators shall be fired immediately upon completion of loading. The blaster shall notify the supervisor in charge of workers in the area before commencing to connect loaded holes. Once beginning to connect loaded holes, this shall proceed without delay until all holes are connected. All persons within a three hundred (300) foot radius of the blast area shall be removed by the time all holes are connected and work shall not commence again until the holes have been fired. However, after connecting the loaded holes, if for any reason the holes cannot be fired immediately, all work shall cease within a radius of three hundred (300) feet of the blasting area and work shall not commence again until the holes have been fired. not commence again until the holes have been fired or all holes disconnected.

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> Comment/Response: All holes containing detonators shall be fired immediately upon completion of loading - We need a clarification of " holes fired immediately upon loading"

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> 34 17.6. Employee parking and mantrips.

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> (a) On all active surface mines, a designated area shall be provided for parking of employee's vehicles. All employees shall park their personal vehicles at the designated parking area. Sufficient illumination shall be provided at all parking areas and parking areas shall be maintained in good condition.

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> Comment/Response: The term "Sufficient" is vague. How will "sufficient" be determined?

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> 20.11. Persons entering a mine - Only authorized persons shall be permitted to enter a surface mine. The mine operator shall develop a plan to account for those authorized persons while at the surface mine. The plan shall be available to a representative of the Director upon request.

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> Comment/Response: "Plan to account for authorized persons". Need to define "authorized person". Will visitor logs at the guard posts be sufficient?. Numerous contractors, train crews, gas company employees, forest fire fighters, landowners, enforcement personnel, vendors, stray 4-wheelers and company employees enter the mine site on a daily basis. How do we secure the property boundaries to keep those folks who are not invited? What is the penalty?

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> (g) One temporary splice may be made in any portable trailing cable. Such trailing cable may only be used for the next twenty-four (24) hour period. Temporary splices in trailing cables shall be made in a workmanlike manner and shall be mechanically strong and well insulated. Trailing cables or hand cables which have exposed wires or which have splices that heat or spark under load shall not be used. As used in this section, the term splice means a mechanical joining of one (1) or more conductors that have been severed.

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> Comment/Response: Need a complete definition of "temporary splice". What type documentation will be required to determine the (24) hour period?

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> §56-3-42 26 Nontitled.

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> 42 26.1.

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> (a) Immediately prior to the beginning of each working shift, all equipment except licensed vehicles subject to state highway inspection requirements shall be examined by the equipment operator or a mechanic if designated by the foreman in charge of the operation daily for safety defects. The person performing such examination shall record his findings in ink or indelible pencil on a form approved by the director; such form shall be given to the mine foreman or his assistant within four (4) hours after the beginning of the start of the working shift. The person performing the above examination shall sign the report form and the foreman receiving such form, shall initial upon receipt. A record of all above such examinations shall be maintained for thirty (30) days remain with the equipment for thirty (30) days and made available to an authorized representative of the director and to the miners at the mine.

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> Comment/Response: Record of preshifts to be kept with equipment for 30 days. This exposes the records to loss or damage. It also leads to inadequate pre-shift exams due to operators copying the previous shift's inspection.

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> (c) Imminent danger equipment defects shall be reported immediately to the mine foreman, tagged out and corrected before the equipment is put into operation. The mine foreman shall record the defect in the pre-shift book.

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> Comment/Response: Defects recorded in the pre-shift book. The equipment has been removed from service and tagged out. This places a cumbersome burden on the mine foreman to list these items in the book. The current law requires equipment to be removed from service and the foreman picks up the operators pre-shift and signs it, so why log it in the foreman's pre-shift book? The foreman isn't going to have enough room in his book to write all the things you want to pass.

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> 42 26.2. Operation of shovel, draglines, tractors, backhoes, loaders, etc.

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> (a) No person(s) shall enter the work area of any mobile equipment until first making positive contact either audible or visual with the equipment operator(s). Equipment operators shall cease operating their equipment when any person is within such proximity as to be endangered.

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> Comment/Response: Is this language concerning people on the ground? If not, how do we address a normal loading cycle? Will the truck driver be required to make audible or visual contact with other equipment operators? What about trucks passing on the haul roads?

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> (k) Electrical compartments in use on electrically powered mobile equipment shall be maintained free of dust, water, and oil accumulations. Electrical compartment panel doors shall be secured in a manner to prohibit unauthorized access.

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> Comment/Response: Who defines who is authorized to access the electrical compartments? Can we allow a truck driver access to a door with switches?

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> (l) Wheel covers (hubcaps) shall be provided for electric wheel motors, shall be maintained in good condition, and shall be adequately secured.

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> Comment/Response: Does a bungee cord provide for "adequately secured"? Can a cover have a hole in it? How big of a hole? Can it be cracked?

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> (d) Adequate mirrors shall be maintained on all mobile equipment.

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> Comment/Response: Define "adequate mirrors"?

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> (e) Cabs of mobile equipment shall be kept free of extraneous materials and adequately ventilated by mechanical means.

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> Comment/Response: Define mechanical means? Air conditioning or electric fans?

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> (o) All hand-held tools, power tools and safety devices shall be used and maintained in accordance with manufactures specifications.

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> Comment/Response: Some hand held power tools come with trigger locks. If we remove the lock, does that violate the manufactures' specifications?

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> (b) Prior to any equipment operating on an extreme slope, a meeting shall be conducted

with a mine foreman and all persons involved in working on the extreme slope to develop a written plan as to how the equipment operators shall work on the extreme slope safely. The written plan shall specify the extreme slope work area and shall address the following variables:

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> Comment/Response: Most of our drill benching will be on areas of extreme slope. Can the plan cover the entire mine or does it have to be site specific? If so, how big of a site?

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> 3. Soil conditions including the ground pressure, the size and number of rocks on the extreme slope, weather conditions and visibility;

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> Comment/Response: Ground pressure - How is it measured?

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> (f) No equipment shall operate on an extreme slope unless the equipment operator is able to see the full length of the extreme slope.

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> Comment/Response: Our permit lines generally run mid-length of steep slopes. We are not allowed to clear trees below the permit line, thus any work we do on permit will not provide visibility to the full length of the extreme slope. How does that effect a dump tractor working a the face of a valley fill in the dark? The operator cannot typically see the bottom of the fill.

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> (g) While working on an extreme slope, a sufficient landing area shall be maintained at the bottom of the slope consistent with the size of the equipment.

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> Comment/Response: Our permit lines generally run mid-length of steep slopes. We are not allowed to clear trees below the permit line, thus we cannot construct a "landing area" at the bottom of the slope.

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> (m) Constant communications either audible or visual shall be maintained between equipment operators while working on extreme slopes. No one shall work on an extreme slope alone.

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> Comment/Response: The word "constant" needs to be defined. Does this mean uninterrupted radio conversation or a continual visual observation? If we have constant communication why do we need two people working together?

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> (a) When it is necessary for a tunnel to be closed at one (1) end, an escapeway not less than thirty (30) inches in diameter (or of the equivalent, if the escapeway does not have a circular cross section) shall be installed which extends from the closed end of the tunnel to a safe location on the surface; and if the escapeways is inclined for more than thirty (30) degrees from the horizontal, it shall be equipped with a ladder which runs the full length of the inclined portion of the escapeway. All escapeways shall be adequately illuminated.

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> Comment/Response: Again, "adequate illumination" is a vague statement and would lead to conflict and a judgment call by the inspector.

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> (c) Communications shall be provided near the entrance to the escapeways in drawoff tunnels

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> Comment/Response: If all the employees have two-way radios then why do you need phone communication at the entrance?

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> (e) Self Contained Self Rescuers for all persons working in the drawoff tunnel shall be provided and stored near the entrance to the escapeway.

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> Comment/Response: If the escap way is less than 50 feet long, why would you take time to put on a SCSR? Need to have a set distance before having to use this. Theft of the SCSRs would be a major concern.

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Windows Live™ SkyDrive™: Get 25 GB of free online storage. Get it on your BlackBerry or iPhone.

Massey Coal Services



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July 14, 2009

Ronald L. Wooten, Director
WV Office of Miners' Health,
Safety and Training
1615 Washington Street, East
Charleston, WV 25311

Re: Proposed Amendments to Surface Mine Legislative Rules
Title 56, Series 3 of the Code of State Rules

Dear Sir:

Attached please find Massey Energy's clarifying comments on the above-referenced proposal.
Please do not hesitate to contact us with any questions.

Respectfully submitted,

Elizabeth S. Chamberlin

Attachments

Comments to Proposed Changes to § 56 Surface Mine

General comments

- Where codes or standards are references, such as the National Electrical Code, a specific edition or publication years should be referenced or the date of the subject equipment's manufacture.

- Use of adjectives, such as "adequate," should be removed as too subjective. Other phrases, such as "high pressure" and trailing cable, need definition.

- Highwall miner provisions are too specific and do not take-in account differences in design between models/manufacturers and well-established industry practices. Where highwall miners fall under a number of general existing surface mining rules and do not need to be addressed, such as signage. Photos of Superior and Addcar highwall miners are attached for further illustration.

- Explosives and blasting provisions should conform to ATF requirements.

§ 56-3-3 Surface mine definition includes preparation plants, which may lead to confusion with regard to applicable rules in light of the proposed new rules under § 56-16.

§ 56-3-3.9 . . . a "qualified" individual working . . .

§ 56-3-3.42 Delete "windings or transformers or S.C. generators" and replace with "windings of transformers or a generator."

§ 56-3-3.43 Change (inherent **and** intentionally **delete** "added or both". . .)

§ 56-3-3.44 Check on Federal Bureau of Mines – probably MSHA now.

§ 56-3-3.45 3rd line - . . .shall mean a conductor (delete metallic and 1st or); 4th line delete "a mine track or other".

§ 56-3-3.48 Replace "surge current" with "surge voltage."

§ 56-3-3.49 Change language . . ."low voltage shall mean voltages from 24 to 660 . . .

§ 56-3-3.52 Delete in the 2nd-3rd lines – "normally underground"

§ 56-3-3.53 Delete "A. C."

§ 56-3-3.55 Change language in the 2nd line to read "which one of each transformer or generator winding is connected together . . ."

§ 56-3-9.2 Retains a reference to flame safety lamps.

§ 56-3-10 The requirement for countersigning of prior shift entries in all record books prior to the beginning of the next shift does not add to mine safety and, in fact, may take away from valuable preshift verbal communication with preceding and oncoming shift personnel.

§ 56-3-10.2 (b) This provision appears duplicative of existing preshift requirements for active work areas, including roads.

§ 56-3-10.5 and § 56-3-9.1 Appear to be duplicative provisions.

§ 56-3-13 New provisions for highwall work/plans, subpart (c) provisions for reporting of a highwall failure, does not define a "failure." Existing subpart (i) should not be changed - by removing the word "dangerous", this provision is now subjective interpretation as to what is "near a highwall."

§ 56-3-13.3 (b) references provisions that appear to be under the purview of the DEP.

§ 56-3-13.3 (c) and (d) see general comments above. MSHA does not approve ground control plans. Does MHST have the resources to approve plans in a timely fashion.

§ 56-3-13.3 (g) Clarify that work prohibition relates to area within the barricade only.

§ 56-3-13.3 (i) Stay with the original provision. Revision provides no safety benefit.

§ 56-3-13.7 Delete the adjective "adequate" as subjective.

§ 56-3-13.8 (c) Settling with resultant cracking occurs on a fill and do not represent tension cracks. However, controversies over the definition of a crack are likely to become common place if this provision is adopted as written.

§ 56-3-15.1 (j) "Proper" is subject and unnecessary.

§ 56-3-15.3 (b) References to other documents should be date specific, e.g., 1998 Edition. Otherwise this provision and others are constantly in flux.

§ 56-3-17.2 (d) The proposed changes regarding berms or guards introduce unnecessary ambiguities. The original language is clear and should not be changed.

§ 56-3-17.2 (j) This change for runaway roads or equivalent removes the grandfather provision contained in the original, which may present a hardship.

§ 56-3-17.4(k) Coal truck drivers have CDL licenses and are not involved in the process of mining coal. The question, therefore, is whether a surface miner certification for these drivers would enhance their training and knowledge base in relation to their jobs.

§ 56-3-17.6 (c) Clarification is needed that the 2-way communication for mantrips may be portable and does not have to be an installed unit.

§ 56-3-19.1 (b) Please clarify that the three techniques referenced are not all or individually required, but are condition driven.

§ 56-3-19.1 (d) Other approved methods are unclear; suggest deleting approved.

§ 56-3-19.1 (e) Should be covered by surface mine preshift provisions. No need to require inspections by multiple people.

§ 56-3-19.1 (f) Replace "sufficient" with "a."

§ 56-3-19.1 (g) Suggested language: Only persons authorized by mine management shall be allowed.

§ 56-3-19.1 (h) Redundant. Signage requirements covered under general surface mining provisions. Signage is also on highwall miners. No need for separate danger signs at the entrance to the area of highwall mining.

§ 56-3-19.1 (j) Delete reference to "open flames." Cutting and welding are performed safely around highwall miner launches. Procedures for cutting and welding covered elsewhere. Proposed requirement for posting of no smoking signs in highwall miner pits should be replaced with a requirement for posting on the highwall miner launch.

§ 56-3-19.1 (k) Modify to say "Records and maps shall be kept showing typical height, width, depth, and spacing projections for mining entries. Clarify record retention period.

§ 56-3-19.1 (l) Filing of mine maps is covered elsewhere and should be deleted here.

§ 56-3-19.1 (h) This provision is problematic as written because it is unclear what is required and the statement that "no routine maintenance or servicing shall occur at the highwall entry is contrary to established industry practice and will create hazards if adopted.

§ 56-3-19.2 (b) Proposed change – "highwall mining shall not intersect **known** mine workings.

§ 56-3-19.3 (b) Suggested change: Highwall mining into and through oil or gas wells shall . . . This change is suggested to clarify that core holes, presplit holes, etc., do not require plugging.

§ 56-3-19.4 (c) and (f) Addcar design is safe and serviceable, but does not necessitate for safety, or permit, guarding of all moving parts and does not have a conveyor start-up warning.

§ 56-3-19.4 (l) Revise to read Mine operator shall require all people handling energized portable training cables to wear gloves. This protective equipment shall be furnished by the operator.

§ 56-3-19.4 (m) and (n) Superior highwall miners are not designed to accommodate, nor benefit, from the proposed handrails or pull cords.

§ 56-3-19.5 (a) Replace “in the line of duty” with “authorized by mine management.”

§ 56-3-19.5 (b) An alternative to deenergizing the controls should be incorporated, such as installation of a pass word into the computer controls. Pulling the breaker would shut down the system computer and require a lengthy (20 minute or so) restart.

§ 56-3-19.5 (c) Proposed change: No persons shall work under suspended loads. Where required, suspended loads shall be controlled with the use of tag lines or other equivalent systems. Look at other state or MSHA provisions

§ 56-3-19.5 (d) Should not apply where the conveyor system is covered; only where conveyor chain is exposed during operation.

§ 56-3-19.6 (e) Unsafe methane levels should be changed to detection of 1%. Work to correct condition should be permitted.

§ 56-3-19.7 (a) Should be clarified to note that guarding is at the cable reel to prevent persons from entrapment between the reel and the cable where it wraps on the reel.

§ 56-3-20.4 Delete open flames. Cutting and welding is safely performed in these areas. Oil storage tanks are present on the highwall miner launch.

§ 56-3-20.5 (a) What is a high-pressure hose? The loose use of “hazard” will present some problems in interpretation.

§ 56-3-20.5 (c) It is not beneficial or necessary to have a pressure reducing device on all 1/2 “ hoses; generally no continued pressure risk following break.

§ 56-3-20.11 Change to read: Only persons authorized by mine management shall be permitted
...

§ 56-3-21.1 (a) Stay with the standard in the industry and do not expand. Standard danger tag should be adequate with the name of the person locking-out the equipment and the date.

§ 56-3-21.2 (d) Ground fields . . . at a resistance not to exceed 25 ohms.

§ 56-3-21.3 (d) Change “of the **governing NEC at the time of equipment manufacture.**

§ 56-3-21.3 (e) Change “Splices made shall provide continuity of required conductors.”

§ 56-3-21.3 (f) Replace with the following language “Low, medium and high voltage power wires shall be installed as required by the governing NEC at the time of machine manufacture.”

§ 56-3-21.3 (h) Replace with the following language “ Single phase loads, when connected to a three-phase system, shall be connected phase to phase.

§ 56-3-21.4 (b) (2) Change “Actuating at least two of the auxiliary protective relays,”

§ 56-3-21.5 (e) Change last sentence “. . . under voltage, grounded phase, and short circuit protection.”

§ 56-3-21.6 ((i)) Change 2nd line “. . . check conductor **if required** and grounded metallic”

§ 56-3-21.7 (c) Note that you cannot ground monitor all electrical enclosures on a highwall miner launch or miner system. Therefore, limit this requirement to the following :Metallic frame, casing and other enclosures of electrical equipment that can become alive through failure of insulation or by contact with energized parts shall be grounded.

§ 56-3-21.7 (g) Delete “near the pole end” and insert “as required below phase conductors of the high voltage power line.” Note that insulators must often be moved down to protect guys near pole mounted transformers and such and are not at the pole.

§ 56-3-21.8 (f) Again NEC in effect at the time of equipment manufacture.

§ 56-3-21.9 Delete the last sentence. Note that often lines are designed with lightening circuits, telephone and such below high voltage lines that require routine maintenance while the main line is energized. In these cases acceptable clearance always present.

§ 56-3-21.9 (l) Add at the end “ for the ground continuity check circuit **if required.**” Note that often circuits can use a wireless monitor in which a monitor wire is not needed.

§ 56-3-21.11 (e) Delete in the 1st line “two separate and. . .” Note that often an equipment closet or enclosure has only one way to egress. Typical access is limited for maintenance access.

§ 56-3-21.11 (h) Modify language to say at least a 10 pound fire extinguisher or equivalent.

§ 56-3-25 Delete permissible and replace with approved respirators. In the second sentence replace “or other approved methods” with “or equivalent methods.”

§ 56-3-26.1 (c) Change “immediate” to promptly and add “or his designee” after mine foreman.

§ 56-3-26.1 (d) Delete “according to the manufacturers instructions.”

§ 56-3-26.2 Phrase “mobile equipment” needs to be defined. The section header and subparts appear to reference large mobile equipment used in the mining process and not include smaller 4-wheel vehicles. See particularly § 56-3-26.4.

§ 56-3-26.2 (a) Modify to read “energized or, perhaps, operating mobile equipment.

§ 56-3-26.2 (c) Add at end of sentence “Equipment operators shall not leave their cabs without lowering all raised equipment to the ground “**unless equipment failure is experienced.**”

§ 56-3-26.6 (c) Sleds are currently an accepted industry practice for this operation

§ 56-3-26.6 (k) Reworded as follows "All ropes shall be securely attached to the drum and the dipper by suitable wire rope clips or proper wedges. Drums shall have at least three wraps of cable on at all times."

§ 56-3-26.7 (l) Not 100% certain, but some may not be equipped with wheel covers

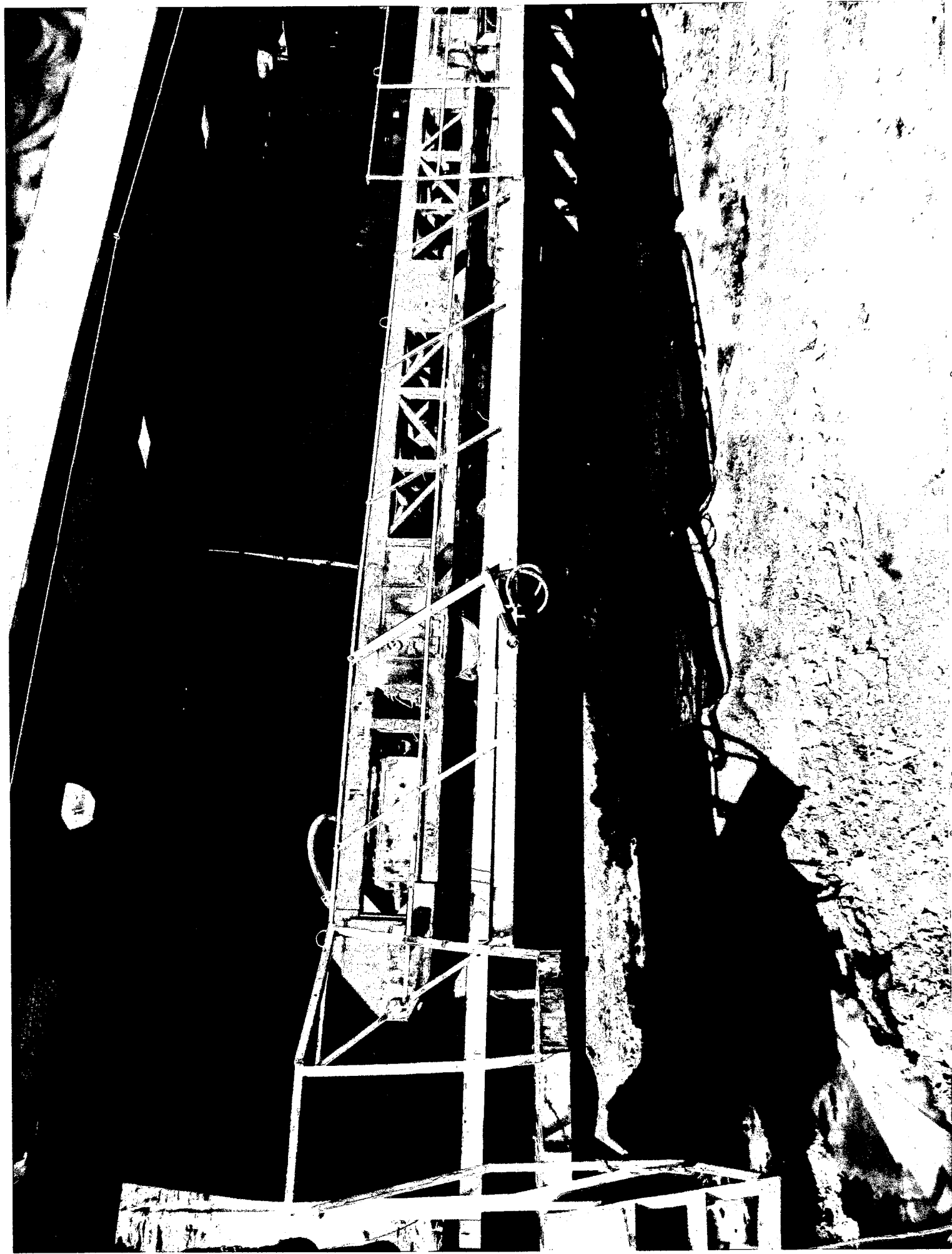
§ 56-3-26.16 Specification is unclear.

§ 56-3-26.17 Sentence 1 insert period after hoods.

§ 56-3-26.21 and 56-3-3.86 2:1 is not an extreme slope.

§ 56-3-31.3 The industry practice should be verified for dock and barge workers as it relates to shoes and hats.

§ 56-3-48 The elements to be listed on the mine map, as defined in each subpart, should be limited expressly to those "known" or "identified."



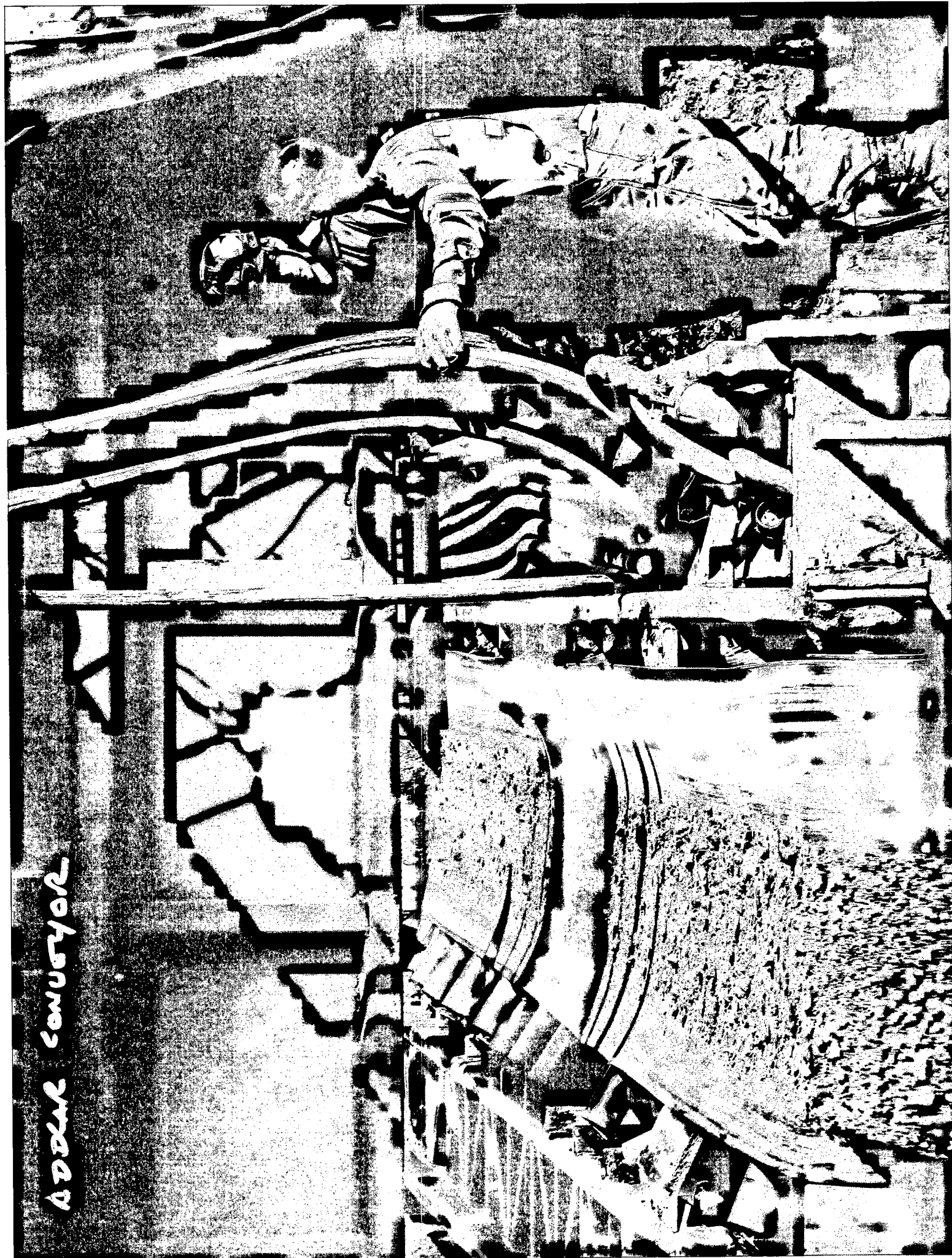
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ADDER MAN - PULLING CABLE OPERATION



403 CAR RUN WALKWAY ADJACENT TO CONVEYOR



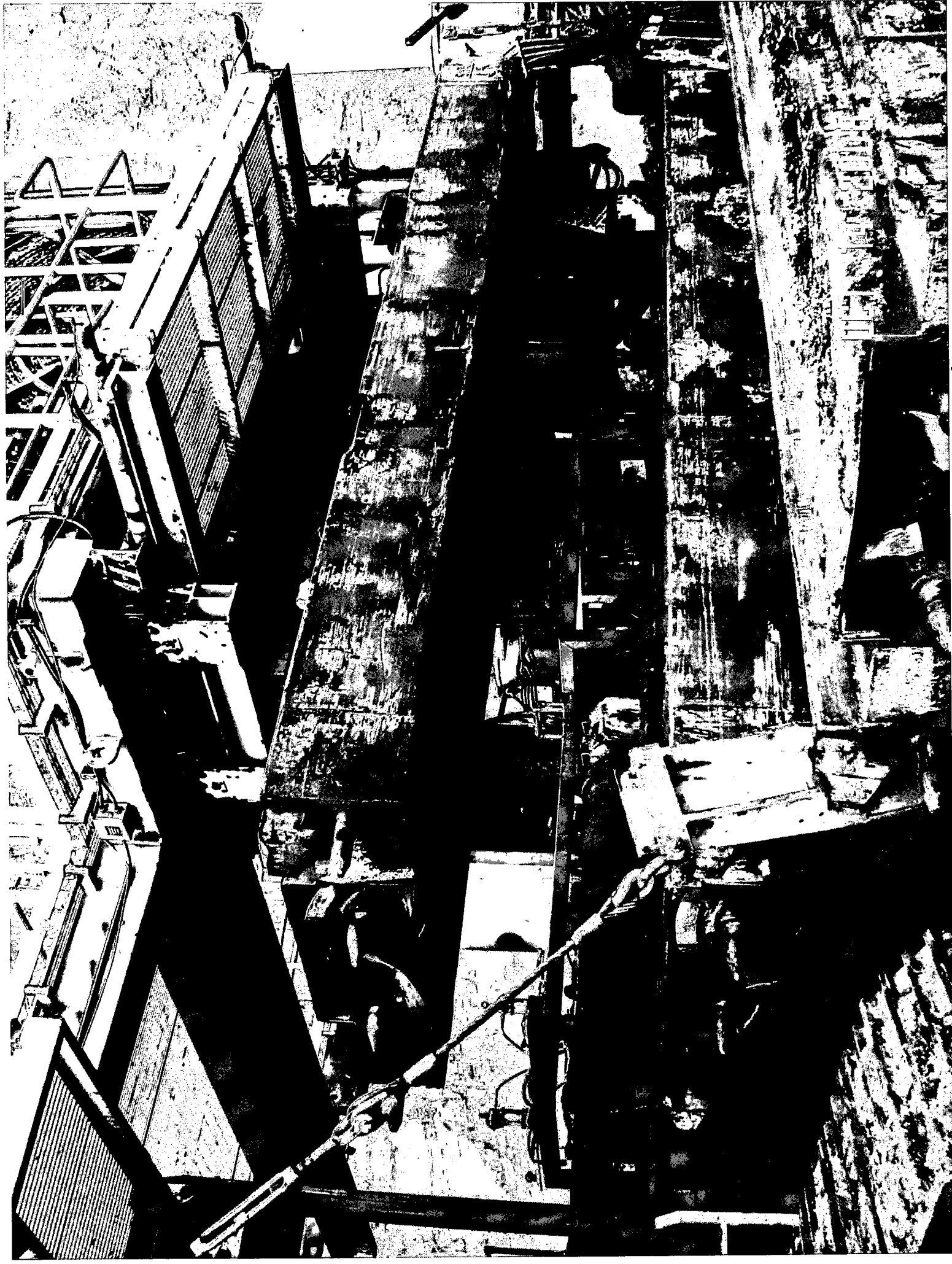
ADDER CONVEYOR



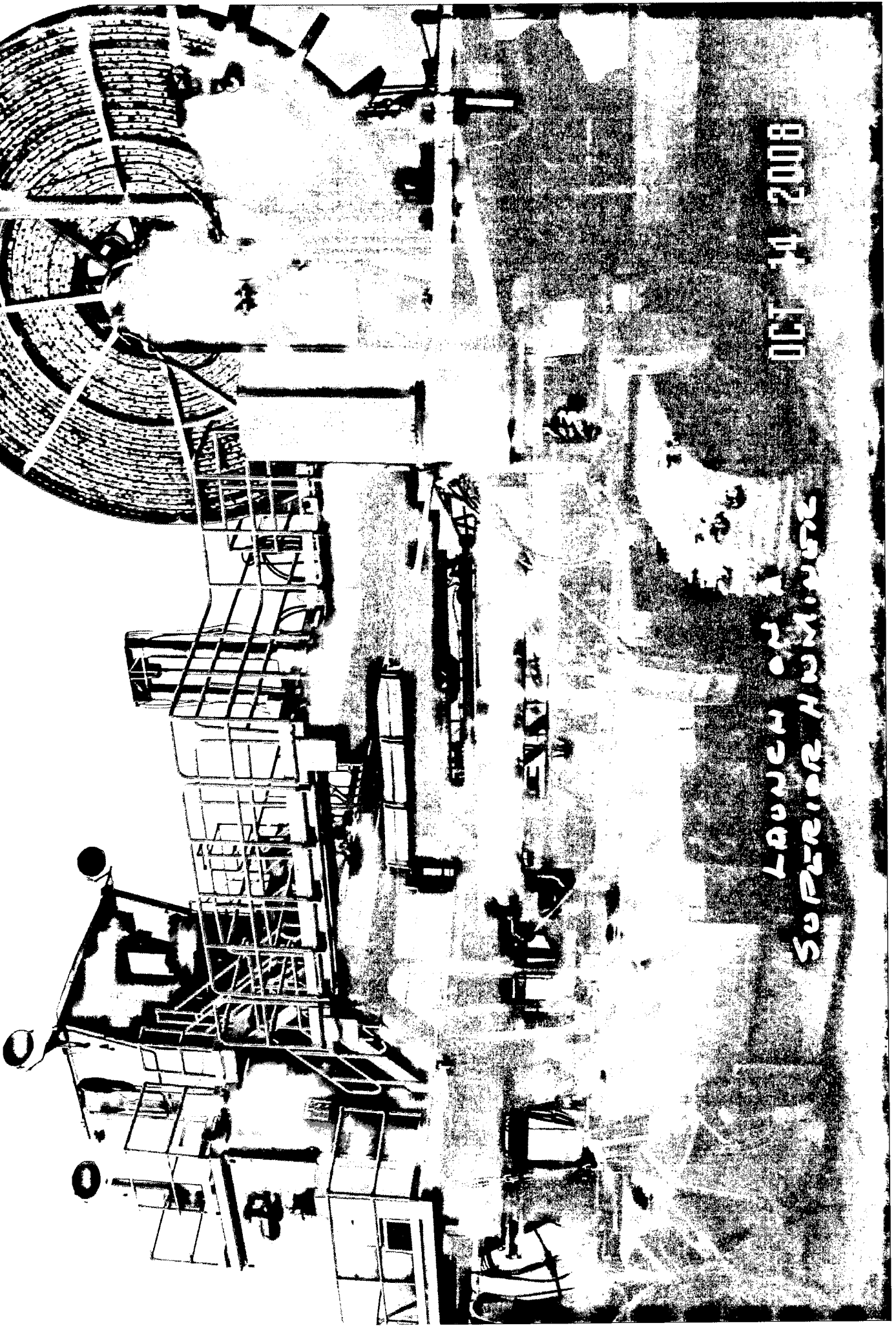
Superior How Low with Roll
and Lateral rollers



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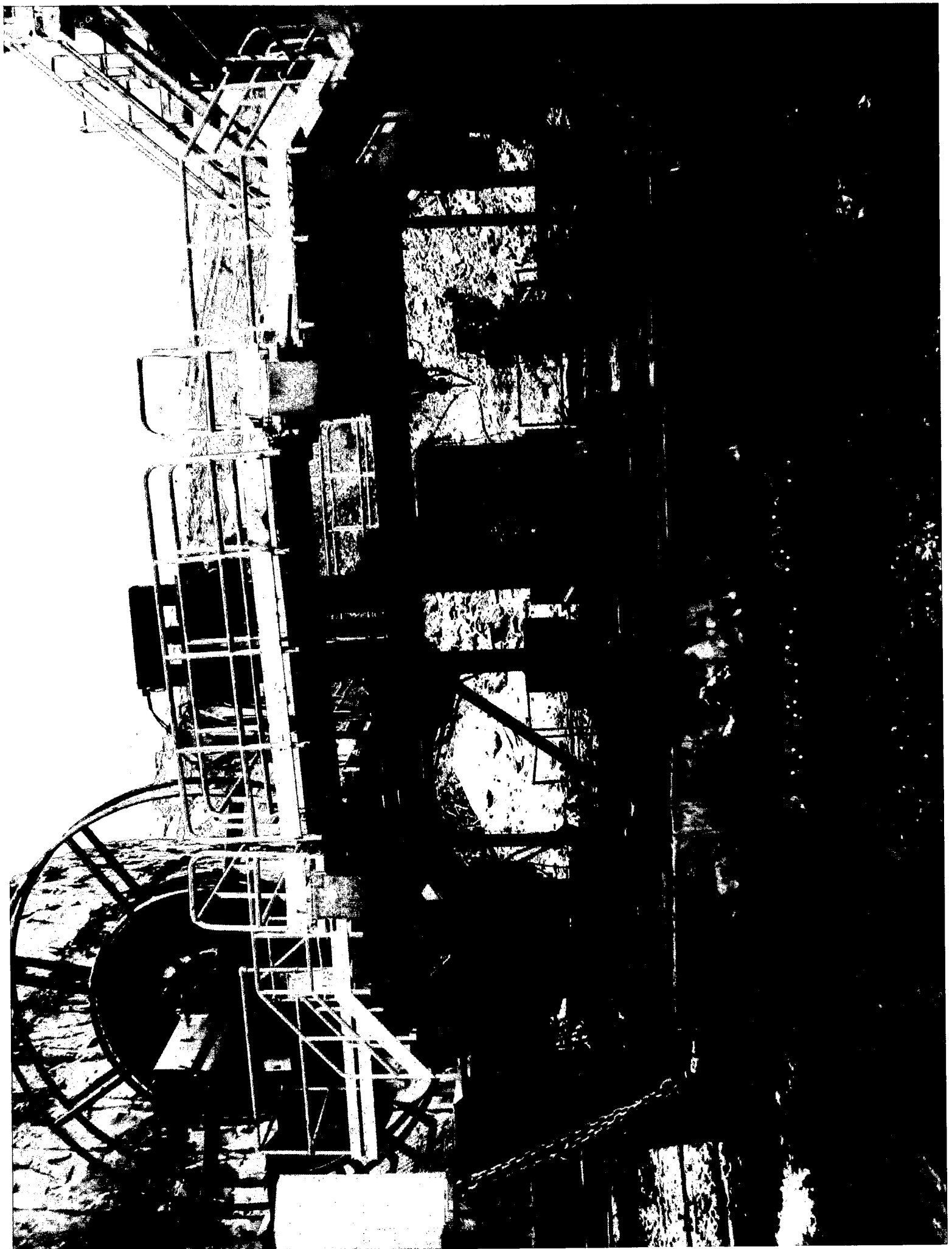


LOADING DRUMS ON SUBMARINE U.S.M.



OCT 14 2008

LAUNCH ON A
SUPERIOR HOWLING





James M. Hall.

Comments of the United Mine Workers of America
On the
Proposed Rules and Regulations
Governing the Safety of Those Employed in and Around
Surface Mines in West Virginia
July 15, 2009

The United Mine Workers of America writes concerning the Rules and Regulations Governing the Safety of Those Employed in and Around Surface Mines in West Virginia. First the United Mine Workers of America would like to state for the record that we believe this rule needs to be withdrawn. If the Office of Miners Health Safety and Training (OMHS&T) were truly interested in learning what the mining community thinks about these issues it would have permitted the proper process to take place prior to submitting them as a proposed rule. Other than the necessary updates as required on any Regulation, the OMHS&T has not shown there is a significant problem requiring these proposed changes in the coal mining industry and provides no statistical data to prove this need is as great as suggested. The OMHS&T certainly does not put forth sufficient data to warrant that this proposal be rushed through on such a short calendar.

Again, the UMWA suggest that these proposed rules be withdrawn, however if the Office refuses to withdrawal the rule, we welcome an extension to the comment period as necessary to permit the industry stakeholders sufficient time to fully evaluate the impact of this proposed rule and prepare additional comments. We feel more time is necessary and would like to submit a request for a 60-day extension to the comment period on this proposed rule.

At this time the UMWA would also like to point out that many of the changes made in this proposal actually weaken the existing law and offer the following comments;

Section 56-3-8.1 Out of State Foreman

Comment - This section states that any person holding a mine foreman's certificate issued by any other state may act in the capacity of mine foreman in any mine in this state until the next regular mine foreman's examination held by the department, but not to exceed a maximum of ninety days. How can the Department justify allowing a person to be in charge of employees who has to make decisions that directly affect the health and safety of miners, a ninety-day pass? These individuals will not have proven to the Department or more importantly our most precious resource, the miner, that they have the skills necessary to make these decisions that ultimately could cause the miner to be placed in situation that could lead to a serious injury or

even death, because he is unfamiliar with the West Virginia Regulations. A few years ago, the State investigated a serious accident at a mine and found that the individual in charge held a certification from another State. The results of the investigation made recommendations that those persons in charge should be certified from the State of West Virginia. This section should require that a person acting in the capacity of mine foreman shall be certified by the State of West Virginia.

Section 56-3-3.63 Electrical Storm.

Comment - The Union is concerned why the Agency chose to redefine a thunderstorm as an "electrical storm." The Agency has also removed the reference to thunderstorms from Section 56-15.3 (e). Standard practice has always been to withdraw persons from areas where explosives are being or have been loaded whenever a thunderstorm is approaching. In the past, the sound of thunder has sufficed for reason enough to evacuate the area, however we question why the Agency has chosen to define an "Electrical Storm" as the determining factor for such evacuation. Is the Agency suggesting that the miners wait until they see lightening before evacuating? It would seem that is the case. There are many approaching storms that warn with the sound of thunder long before any lightening is sighted. The Union recommends that the Agency restore the references to thunderstorms for this reason.

Section 56-3-3.87. Competent Person

Comment - The UMWA is very concerned that the Agency has placed a definition of a "Competent person" in this proposal and in several areas of the rule have proposed to transfer the responsibilities of the foreman to such "Competent Person" for mine examinations, record keeping, etc. Areas of the rule affected by this change include 56-3-9.1; 56-3-10.9; 56-3-11.1; 56-3-15.4 (q); and 56-3-15.8 (b). This would only apply at operation employing fewer than 5 persons, however the Union adamantly opposes such a proposal. The state requires a certain level of knowledge for a person to become certified as a foreman. The foreman is the employer's representative to insure compliance with the regulations and to oversee the operations. To delegate this responsibility to another person in the workforce is unthinkable and the state must not entertain such a preposterous notion. We regret that these small operations have difficulty in filling foreman positions, however we cannot sacrifice the health and safety of the employees at such operations no matter how small they may be. If the Employer cannot afford to hire the necessary people needed to safely operate, they should not be in business. The state has no right to lessen the protections for miners at these small operations in such a manner. Everyone must have a foreman to conduct required

examinations, record these results and to oversee the operation of the mine. If they cannot, they should not be in business.

Section 56-3-9.1 Instruction of Employees and Supervision of Apprentices; Annual Examinations of Persons Using Approved Detectors; Records of Examination; Maintenance of Methane Detectors

Comment- As stated in our position on the definition of a "Competent Person" the Union opposed the use of anyone other than a foreman to perform foreman's responsibilities and opposes such a proposal.

Section 56-3-10.6 (a) Records of examinations

Comment - Although this proposed change kept the requirement that a record of examinations be kept for a period of one year, it appears the language which required these records to be "open for inspection by interested persons" has been eliminated. The Union would question why the Agency proposed to eliminate this requirement. The Union's representatives along with the local union officers and mine health and safety committee routinely review the examination records as a part of their inspections of their operations and in the course of representing our members. With this language removed, one could assume that these records are no longer intended to be "open for inspection by interested persons" and limitations could be placed on our ability to see what has been recorded by the foremen and mine examiners. For this reason, the Union recommends retention of this language in the rule to clarify that these records are open to inspection by all interested parties. This section has eliminated the language that now allows the reports to be open for inspection by interested persons. Did the Department intentionally take these rights away from the miners? These rights need to be reinserted.

Section 56-3-10.9 Records of examinations

Comment- As stated in our position on the definition of a "Competent Person" the Union opposed the use of anyone other than a foreman to perform foreman's responsibilities and opposes such a proposal.

Section 56-3-11.1 Duty of Mine Foreman to Notify Operators When Unable to Comply with Law; Duty of Operator

Comment- This section has language for those mines employing less than five persons in a period of twenty-four hours and who do not have a mine foreman, a competent person, as defined in 56 CSR 3.3.87, shall perform this duty. Why should mines employing less than five persons in a 24 hour period be allowed to use a "competent person" to carry out and perform the same duties that are required to be carried out by a mine foreman or assistant mine foreman at a larger operation. Are the lives of these miners that work in these small mines of less importance than those employed at a larger operation? The same rules that govern large mines must be applied to small mines.

As stated in our position on the definition of a "Competent Person" the Union opposed the use of anyone other than a foreman to perform foreman's responsibilities and opposes such a proposal.

Section 56-3-13 Excavating (d)

Comment – This section states that the ground control plan shall be revised when necessary to ensure safety but it doesn't state who can make such a request. This portion should state that all interested parties have the right to request these changes. The rule should further state that ten days prior to submittal, the Representative of the Miners shall be provided a copy of the plan to allow them to make comments.

Section 56-3-14 Drilling

Comment - Under 14.6 (e), the UMWA seeks further clarification on why the change was made to Secretary of the West Virginia Department of Environmental Protection.

Section 56-3-15 Explosives and Blasting 15-3 (b)

Comment – This proposal makes these records available to the Director upon request. The rule should state that these records be made available to any interested party, including representative of the miners upon request.

Section 56-3-15 Explosives and Blasting 15.1-(j)

Comment – This section makes these records available to the Director upon request. The rule should state that these records be made available to any interested party, including representative of the miners upon request.

Section 56-3-15.3(e)

Comment - As per the UMWA's comments on the definition of "electrical storm" the word thunderstorms needs to be reinserted. As pointed out in our comments on Section 56-3-3.63, the UMWA is concerned why the Agency chose to redefine a thunderstorm as an "electrical storm" and asked that the reference to a thunderstorm be retained in the rule.

Section 56-3-15 Explosives and Blasting 15-4 (c)

Comment – This section needs to be defined a distance of not less than 100 feet but never close enough in which concussion or flying material can reasonably be expected to cause injury.

Section 56-3-15 Explosives and Blasting 15.3 General requirements-explosives (q)

Comment - mines that do not employ five or more cannot be exempt from having a certified foreman carry out these duties. The same requirement to have a certified mine foreman, assistant mine foreman must apply at all small and large operations.

Section 56-3-15 Explosives and Blasting 15.6 (h) Blasting

Comment - the rule should further state that ten days prior to submittal, the Representative of the Miners shall be provided a copy of the plan to allow them to make comments.

Section 56-3-15 Explosives and Blasting 15.8 (b) Misfires

Comment - mines that do not employ five or more cannot be exempt from having a certified foreman carry out these duties.. The same requirement to have a certified mine foreman, assistant mine foreman must apply at all small and large operations.

Section 56-3-17 Haulage 17.4(k) Haulage Equipment-operations

Comment - The UMWA seeks clarification on how the Department made a determination on this requirement. We are requesting that the Department provide us with the data used to show 6 months and 108 shifts meet the needs to qualify an individual. Also we seek clarification if this rule would be applied to coal trucks that load coal hauled away from mine property to another location for delivery.

56-3-19 Highwall Mining 19.4 (1), (2), (3)(I) Protection of Workers

Comment - The rule should state that these records be made available to any interested party, including representative of the miners upon request, and that ten days prior to submittal, the Representative of the Miners shall be provided a copy of the plan to allow them to make comments.

Section 20.2 Alcohol and drugs

Comment – The UMWA questions why the West Virginia Office of Miners' Health, Safety and Training (OMHST) would involve its authorized representatives in a mine operator's drug and alcohol testing programs. In November 2008 the UMWA provided extensive comments to the Mine Safety and Health Administration regarding rules being proposed by the Federal Government to mandate and regulate drug and alcohol testing in the coal industry. (Copy attached) The Union pointed out that the majority of the industry (80%) already have drug-testing programs in place that far exceed requirements in any other industry. Many of those drug-testing plans have been negotiated between the workers (Union) and mine management to suit the situations at their mines. We do not think the OMHST should involve itself in such matters. It is up to the operator to maintain an alcohol/drug-free workplace and most have programs in place that work to the satisfaction of the employers and the miners.

Our first concern with this provision is that it permits the authorized representative to select any miner at random and ask that they be drug tested. The rule does not require

"reasonable suspicion" before such testing could occur. No miner should be subjected to being picked out by the OMHST for drug testing without there being grounds for doing so. By placing itself in this situation, the OMHST is crossing over into issues protected by contract and plans negotiated between the Union and the Employer. We do not think it appropriate for the Agency to play this role. Our second concern would be to question the qualifications of the state's authorized representative to make a determination that a miner is impaired by drugs or alcohol. MSHA's rules proposed a two hour training program with one hour refresher training annually for those who would have been the front line of defense in recognizing signs of alcohol and drug use. The Union objected to this proposal, citing that a two hour canned training presentation does not qualify a person to make such judgements. We question what training the OMHST is planning to conduct for its authorized representatives to play this role? The Union maintains that this responsibility must be placed with a competent person who is knowledgeable about workplace substance abuse and specifically trained to recognize those signs. The OMHST should not place its representatives in such a role and we ask that this provision be stricken from the proposal.

**Comments of the United Mine Workers of America
On The Proposed Rule For
Alcohol – and Drug-Free Mines: Policy, Prohibitions, Testing, Training
and Assistance**

RCVD JUL 11 2009

Introduction

The UMWA does not support the Agency's actions in proposing a new regulation to require testing for Alcohol and Drug use in the mining industry. The UMWA does not want anyone who is under the influence of drugs or alcohol working in our mines, nor do our members want to work next to them because lives are jeopardized when a worker's judgment is impaired. However, we do not believe that this is as great a problem as it has been portrayed in MSHA comments. We have worked with dozens of our members' employers to implement drug and alcohol testing programs because we remain committed to creating the safest and healthiest environments for our miners and that cannot happen when a coworker is impaired. These programs have been in place for a number of years and have been successful in providing the assistance needed when a miner has an addiction problem. If the problem is already being addressed by the industry through its own programs and policies, why does MSHA see a need to act on this issue that in reality presents minimal risks in an industry still plagued by compelling and well-documented health hazards the Agency refuses to address?

The majority of the industry (80%) already has drug-testing programs in place. Further, some states (Virginia and Kentucky) also have regulations governing alcohol/drug testing. The Agency indicates that within the mining industry, nearly four out of five workers report that companies perform alcohol and drug test on a pre-employment basis, which is nearly double the reported all-industry average. Similarly, nearly three-quarters of those working in the mining industry report random testing, which is more than double the reported all industry average (of nearly 30 percent). If the industry already has in place alcohol and drug testing programs which far exceed any other industry, why has MSHA chosen to pursue this rule with such vigilance when many other legitimate health and safety issues in the industry are neglected? The Union contends there is not a significant problem in this area to justify spending government resources to duplicate what the industry is already doing.

Further, statistics do not support the urgent need that is being proposed as the justification for this rule. Reading the Agency commentary on this rule, one would think that drug and alcohol abuse in our nation's coal mines is running rampant. The Agency admits that an internal DOL review of accident reports failed to reveal a significant number of cases where alcohol or drugs were determined to be causative factors. Alcohol and drug use is a complex social and medical problem that warrants a more compassionate approach than is proposed here. Mine operators should be provided the flexibility to work with miners to find the best programs suited to their specific problems, work sites and communities. A boilerplate standard, as proposed, does not provide the people involved in such a complicated issue the flexibility to design their program to fit

their individual needs. Therefore, we would urge the Agency to let the industry continue to do what it has been doing to resolve this "perceived problem."

The information that MSHA has disseminated in support of the proposed rule on substance abuse¹ does not meet the requirements of the Information Quality Act² or of the guidelines developed by the Department of Labor³ as required by the Office of Management and Budget and by the Information Quality Act. It is completely devoid of any quantitative measure of the prevalence of substance abuse among miners, in mining communities, among miners involved in accidents, and among prospective miners. With information of such fundamental utility absent in any form, it is impossible to allocate resources in a rational manner, to evaluate program effectiveness, or to develop or implement policy. In a word, it lacks utility. Such data being non-existent, evaluating its quality, integrity, and objectivity as required by the Act is likewise impossible. It lacks any reference to scientific findings concerning the relationship of substance abuse and the occurrence of occupational accidents and injuries in spite of numerous pertinent peer-reviewed publications in the scientific literature.

66.1 Purpose

This proposed rule establishes the requirements for mine operators to develop an alcohol- and drug-free mine program to prevent accidents, injuries and fatalities resulting from the misuse of prohibited substances by miners performing safety-sensitive job duties.

As the comments above point out, the Union does not think there is sufficient evidence to warrant the use of government resources to develop and enforce rules on alcohol and drug testing. The Agency's own analysis of fatal accidents from 1975 to 2007 revealed that 24 of 978 reported deaths involved alcohol or drugs and it is unknown whether alcohol or drugs were contributing causes. This equates to 2.4% of the total fatalities over a thirty-two year period. From 1983 through 2007 there were 593,047 non-fatal accidents reported, with 56 possibly involving alcohol or drugs. This equals 0.009% of total accidents over a twenty-four year period. There is no evidence showing that alcohol and drugs make a significant contribution to fatalities and injuries in the industry. Factor in that the majority of the industry (80%) already has drug and alcohol

¹ U.S. Department of Labor, Mine Safety and Health Administration. Alcohol and Drug-Free Mines: Policy, Prohibitions, Testing, Training, and Assistance, Proposed Rule. September 8, 2008. 73 FR (174): 52136-63.

² U.S. Congress. Treasury and General Government Appropriations Act for Fiscal Year 2001, PL 106-554, Sec. 515. December 21, 2000.

³ U.S. Department of Labor. Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Department of Labor. October 1, 2002. URL: <http://www.dol.gov/cio/programs/InfoGuidelines/InfoQualityGuidelines.pdf> November 7, 2008.

programs in place, we do not understand why the Agency sees an urgent need to pursue these standards. The Union feels our tax dollars would be better spent developing rules to protect miners from hazards that actually are killing them. For example, for a number of years the UMWA has aggressively sought actions from MSHA to protect miners from respirable coal and silica dust, yet nothing has happened. Data published by the National Institute for Occupational Safety and Health show that black lung is once again on the rise, afflicting thousands of miners, even younger ones who have been working in the industry only a short time. Actions in this area would save far more lives in our industry and would be a more productive use of government resources and taxpayer dollars.

In fact, in none of the recent major coal mine disasters - Sago, Aracoma, Darby and Crandall Canyon- was there any indication of drugs or alcohol being contributing factors to those accidents. Indeed, in each of those tragedies, the actions or inactions of mine management and MSHA itself were to blame. Following the reasoning of this proposed rule, members of mine management and MSHA should be subject to post-accident testing. We can't help but find it more than coincidental that the Agency proposed this rule in the wake of devastating reports about MSHA's actions in the Crandall Canyon tragedy. We suggest the timing serves to divert attention from the important health and safety issues of the day. The Union would urge the Agency to use its resources more productively to address issues that are genuine threats to coal miners' health and safety.

66.2 Applicability

This proposal would require that alcohol and drug testing only for those who may be required to perform safety-sensitive job duties. Management and administrative personnel who supervise the performance of safety-sensitive positions are also considered to hold safety-sensitive positions. The proposed rule indicates that "safety-sensitive jobs" would include anyone who must take comprehensive miner training under 30CFR parts 46 and 48. The proposal indicated that this standard would include contractors. General administrative and clerical personnel would be excluded from the rule. MSHA seeks comments about the determination of who performs safety-sensitive job duties and is, therefore, required to be tested and trained.

MSHA has indicated that a "safety-sensitive job" would be one performed by miners who are required to take training under Part 48. However, MSHA has chosen to exclude administrative and clerical personnel from the drug testing requirements. The proposed rule is additionally not clear on which supervisors would be included in the alcohol and drug testing. The Union would question the Agency's rationale for these exclusions. The Superintendent of the mine does not normally supervise persons in a safety-sensitive job on a regular basis, but he is responsible for miner and supervisor training, for maintenance policy, and for mine design and operation. Insofar as the rule proposes that any "miner involved in any work activity that could have contributed..." shall be tested ..., we submit that the mine superintendent should be subjected to post

accident testing following every accident at that mine. (The only reason he probably would escape is that upper management has discretion to decide who "could have contributed", presenting an inherent conflict of interest.)

In addition, administrative and clerical personnel are often used to run errands, driving vehicles to and from suppliers, etc. They often also deliver supplies or parts for equipment repair into the mine. Excluding them from testing exposes miners to the effects of their job performance; if they are impaired miners could be adversely affected. Often we hear that "safety is everybody's responsibility." Unless this is idle rhetoric, everybody should be covered under this rule. If miners must be tested, then so should everybody else who enters the mine property. Anyone working on mine property would be exposed to the hazards of the surface area of the mine site. Often this includes the use of heavy equipment such as end loader and dozers; the movement of track vehicles and motor vehicles used for transport and supply purposes. Those doing these jobs as well as those exposed to these hazards should be tested for alcohol and drugs like the underground miners. We agree with the proposal to include all operations regardless of size.

66.3 Definitions

This section of the proposed rule defines the terms used in the context of this rule.

Breath Alcohol Technician (BAT). Under this proposed definition, the Breath Alcohol Technician (BAT) can be an employee of the mine operator. The BAT, MRO or SAP must not be employees of the mine operator. If these individuals, who are supposed to be professionals are employees of the mine operator no one will believe that they will conduct themselves in a fair and impartial manner. Their loyalty will clearly lie with their employer and not with the miner being tested which opens the door to discrimination and the use of these rules for unjustified and discriminatory disciplinary actions.

Medical Review Officer. Under this proposed definition, the Medical Review Officer (MRO) can be an employee of the mine operator or a service agent. The MRO must not be an employee of the mine operator. The loyalty of that licensed professional will be questioned if he/she is an employee of the mine operator. Doing so harkens back memories of abuses of the "Company Doctors" employed throughout the coal fields in years gone by. If this process is to be fair and impartial, the MRO must be an independent source and not employed by the mine operator. To permit otherwise will create unnecessary distrust of the miners and a possible subterfuge for discriminatory treatment.

Prohibited substances.

Comment: Nowhere in this rule is there a definition of what constitutes a valid prescription, leaving this issue up to the discretion of the mine operator or a medical professional. A simple definition already exists, and it can be readily evaluated by anyone, and should be added: "A valid prescription consists of a controlled substance in an appropriately labeled container."

A problem, however, not addressed by this rule is one of medical confidentiality. Many medications that could fall under this rule are treatments for conditions that miners would rather keep confidential, yet there is no provision whatsoever here or elsewhere that would protect a miner's privacy. This is a serious shortcoming that MSHA should address. Another problem is the unfettered discretion left to the Secretary to expand the list of covered substances, and the failure to address how any changes to the list of prohibited substances would be handled (notice, training, test procedures, etc.)

Reasonable suspicion testing. (We recommend replacing the proposed definition with the following: Testing for alcohol or drugs conducted when any person observes possible signs and symptoms of any other person on mine property that suggest alcohol or drug use in violation of the alcohol- and drug-free workplace policy, and the person who suspects such use receives confirmation of possible violation by bringing this problem to the attention of his superior(s) for confirmation.

Comment: Any person on mine property can violate the policy. The proposed rule gives to supervisors, and only to supervisors, the authority to require testing for reasonable suspicion. Not only does this exempt supervisors' from reasonable suspicion testing, it provides for no oversight of the supervisors judgment. The suggested replacement allows any person to "reasonably suspect" drug or alcohol use and provides for oversight in the form of a second opinion.

Substance Abuse Professional (SAP). The UMWA recommends replacing the existing proposal with the following: A licensed mental health professional who can evaluate miners who have violated a mine operator's alcohol- and drug-free workplace policy and makes recommendations concerning education, treatment, and aftercare.

Comment: Alcohol and drug addiction are recognized mental disorders (See the Diagnostic and Statistical Manual, version IV) and should be treated by a licensed mental health professional. Such problems should not be "treated" by people that are not recognized (i.e., licensed) as such. Furthermore, once a miner has been referred to an SAP, the loyalty of that professional should be to the miner and consequently, he or she should not be a part of any procedure (such as a schedule of drug or alcohol testing) that could lead to disciplinary action. The SAP could order tests by himself but only for use in treatment.

Substituted Specimen. The UMWA recommends modifying it to read as follows (changes are underlined). A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine from a healthy person.

Comment: Abnormal values of creatinine and specific gravity can both be indicators of underlying disease and a miner with an alleged substituted specimen should first be referred to his own physician.

66.100 Prohibited substances

This proposal requires that prohibited substances not be permitted or used on or around mine property. Paragraph (b) would exempt those who have a valid prescription for the substance and are using it as prescribed. The Medical Review Officer would verify that the miner has a valid prescription and is using it as prescribed.

MSHA indicates that the most prevalent drugs of concern in the mining industry include alcohol, marijuana, cocaine, opiates, methamphetamines and prescription painkillers, most notably methadone and oxycodone. The Agency cites National statistics on the use of prescription drug misuse as the second-ranking drug threat in terms of prevalence, and findings of the Mine Substance Abuse Task Force that rates of prescription drug misuse in the Appalachian mining region may be higher than the national findings. Neither of these sources reveal anything about such use or mis-use among miners at work. Thus, they do not serve to support the proposed rule. Moreover, testimony during the Task Force investigation indicated that much drug dependency among miners can develop from the legitimate use of prescribed painkillers. This is not surprising because miners work in one of the most hazardous industries in the United States. One could expect miners, who have been injured, would be prescribed pain-relieving medications by their physicians in the process of recovery. Some of these medications such as oxycodone are known to be highly addictive. When one looks at the overall picture, it is not surprising that the Task Force would make such a conclusion. The Union does not deny that some of these problems exist in the industry, however we do not agree that drug-abuse among miners is as wide-spread as MSHA suggests. When one considers that Virginia and Kentucky have drug testing requirements and most operators have had their own drug and alcohol testing programs in place for many years, it is hard to imagine how so many have been able to slip through the system to create as great a problem as MSHA suggests. Furthermore, given the existence of these programs, it is astounding how little data there is revealing any significant problem. The UMWA is not aware of any objective data linking alcohol and substance abuse to mining accidents. Most data used as justification for this rulemaking is anecdotal, or tied to use among the general population, not miners' much less miners at work.

The UMWA is also concerned about potential conflicts of interest between provisions of this proposed rule and HIPPA laws, such as regarding the MRO's role in validating a miner's prescription. The miner's physician might be limited under HIPPA as to how much information he/she could divulge regarding the miner's illness or

treatment. Before such a proposal is put into place, research should be done to make sure there is no conflict in regulations and that miners' confidentiality is protected without placing them at risk of discipline pursuant to this rule. The UMWA also is concerned that provisions of this proposed rule will implicate the ADA, and perhaps the FMLA. If an employee tests positive under this rule ADA protections may conflict with what is proposed here. Finally, collectively bargained protections cannot be forfeited by operation of this rule and may present conflicts.

66.101 Prohibited behaviors

This proposal requires that miners who have been identified as being under the influence of a prohibited substance shall not be allowed to perform safety-sensitive job duties. If identified as being under the influence of alcohol or a drug, they must be removed from their job duties. If the miner refuses to submit to a drug or alcohol test or has an adulterated or substituted specimen, he also must be removed from his job duties.

The rule references 66.3(p) but there is no such designation in the proposed rule; we treat the proposal as referring to the definition of "prohibited substances." The UMWA's Native American Members have indicated that in most instances, drug testing of the miners at mines located on their reservations is prohibited due to conflicts with their religious beliefs. Any rule that may be put forth must take such conflicts with one's religious beliefs into consideration and make allowances. "Under the influence" is treated as including a positive urine test for drug metabolites. This is a distortion of the plain meaning of the word, "influence," which means ". . . the act or power of producing an effect." (Webster's 9th Collegiate Dictionary). It is well recognized that a positive urine test for drugs or their metabolites is only an indicator of previous (to the test) use and is not an indicator of being "influenced" or impaired by the drug.

Further, as noted in the preamble but not set forth in the proposed rule, MSHA is adopting the cut-off levels used by DOT. By relying on DOT, MSHA imposes on the mining community a different industry set of procedures. If DOT later changes its procedures the mining industry would also be affected, likely without the kind of notice/comment required by the Administrative Procedures Act. Finally, we note that DOT's drug testing resulted from high profile accidents where drug and alcohol had contributed; Congress required changes to DOT's scheme pursuant to needs of the transportation industry. This is factually different from actual experience in the mining industry. Not only have the high-profile multi-fatal accidents of recent history in the coal industry been devoid of drug/alcohol problems, but Congress enacted the MINERAct in 2006. At that time it considered and rejected imposing drug testing for the coal mining industry, and chose not to change these practices within metal/non-metal. For this reason the DOT model should not serve as a model for the mining industry. It is arbitrary to adopt a different (transportation) industry's format and make that protocol affective on an ongoing basis in the mining industry.

66.200 Purpose and scope

This proposal requires the mine operator to establish a written alcohol and drug-free program which includes an education and awareness program for non-supervisory miners, a training program for supervisors and a testing procedure and referrals to assistance for those who violate the rule.

Like the National Mining Association, the Union would question whether the proposed rule would create confusion or conflict with state laws already in place. We agree with the NMA that the proposed changes may cause enormous confusion and pose severe implementation problems where such state laws exist. Furthermore, how would the proposal accommodate voluntary programs that some employers already have adopted? These are all issues that must be taken into account and sufficient time permitted for the mining community to assess the affect the rules will have on all of these issues. For that reason, we agree that more time is needed for those who will be affected by this rule to properly evaluate the rule's impact.

Everybody covered by this rule should receive the same training -- education and awareness and whatever training is developed for supervisors. The plain reason is that everybody covered by this rule should be treated the same. The rule makes the false and insulting assumption that the problem of drug and alcohol abuse is a problem among miners and not among supervisors. This comment also applies to Part 66.202 and 66.203 below.

66.201 Written policy

This proposal would require each mine operator to develop a written policy and provide it to all miners covered by the rule.

The proposed rule would require that a copy of the written policy be provided to the miners' representative or posted on a bulletin board in a common area where the miners do not have a representative. The proposal provides the option to the operators to distribute the policy during the alcohol and drug-free awareness training sessions or to be distributed in an electronic format. The Union insists that a copy of the policy be provided to the miners' representative and would further suggest that the operator be required to distribute a paper copy to all individual miners. It would not be fair to permit this distribution electronically because some miners are not computer users and would not be properly notified.

66.202 Education and awareness program for nonsupervisory miners.

This proposed rule would require the alcohol and drug awareness training program be incorporated into Part 48 training. The training for new hires would be 60 minutes and 30 minutes annually for all non-supervisory miners.

The Union questions how much more training is the Agency going to require to be incorporated into the Part 48 Training Program? The Union insists that these training classes are not included in the already over crammed Part 48 annual retraining classes. Part 48 training has had many additional requirements added through other rulemaking. Even though the Agency has proposed that the additional time be added to the Part 48 training program to accommodate this training, miners are bombarded with so many issues in the Part 48 training that adding one more is too much. This reduces the effectiveness of all the required training and should not be even further affected with the new training requirements of this rule. The Union believes that this training should be a separate and distinct training class for the purposes of the drug and alcohol awareness training. The operator should be required to furnish to the representative of the miners a copy of the training plan fourteen (14) working days prior to its implementation. The miners should also be provided the opportunity to submit comments regarding this plan. A copy of the approved plan should be required to be posted on the mine bulletin board for access to all parties.

The rule as proposed requires the training to be provided by a "competent person..." The UMWA submits that an objective standard be set that includes educational and training requirements. Reviewing MSHA's prepared materials should not suffice for one providing such training. We suggest MSHA certify individuals who will be "competent persons."

66.203 Training program for supervisors

This proposal establishes the guidelines for training for supervisors. The rule focuses on the supervisors' ability to recognize signs of alcohol and drug use; to understand how to refer miners to assistance; and know how to make a determination for requiring a reasonable suspicion or post-accident test.

The Agency is proposing that supervisors be trained to be the front line level of detection for alcohol and drug use among miners. These supervisors will receive a minimum of two hours of initial training with an additional one hour annually thereafter. The Union questions whether two hours worth of training would qualify a person for such a responsibility? Further, the Agency comments that MSHA has already developed materials that can be used to fulfill this required training. Would a two-hour canned presentation available through the Agency be adequate training for supervisors to recognize and deal with such a sensitive issue? We say "No". The Agency also questioned whether it would be wise to spread the authority to initiate such tests too broadly. This leaves the door open to the operators to determine who will be delegated this responsibility and who must receive this training. The Union is concerned that such a broad distribution of authority could be used as a form of harassment in disputes on the working section. This responsibility must be placed with a competent person who is knowledgeable about workplace substance abuse and trained to recognize those signs, not with the section foreman. (Also see comments to 66.202 for this section too.)

The Union also suggests there be a system whereby miners can identify and report supervisors showing indicia of impairment. Miners are not the only ones who may have a substance abuse problem. Supervisors are charged with the many responsibilities in the day-to-day operation of the mine. Many have turned to substance abuse as a means of dealing with those stresses. So we ask who will be charged with observation of supervisors for substance abuse and whether this rule would include them in such observations? We urge the answer to be "Yes" and suggest procedures be added that will allow non-supervisory miners to accomplish testing of supervisors.

66.204 Miner assistance following admission of use of prohibited substances.

This proposal specifies the actions that must be taken by mine operators following the admission of use of prohibited substances by miners. It would require operators to make such miners aware of available assistance through an employee or miner assistance program, a Substance Abuse Professional (SAP), and/or other qualified community-based resources.

This section requires the operator to refer miners who admit to having an addiction problem for assistance through Substance Abuse Professionals (SAP), and/or other qualified community-based resources. The Union agrees that such assistance should be provided to the miner and would support and advocate that they get assistance when needed. We are concerned that there are few Substance Abuse Assistance Programs in rural Appalachian areas where miners live and work. If the miner is to participate in such a program, he likely would have to travel many miles from home to the nearest city to gain access to such programs. If Substance Abuse Programs are to be successful, they must be easily accessible to rural mining communities. The Union would ask that the Agency take a survey of what programs are available and their locations to supply as a resource to the mining community. This part of the proposal can only be meaningful if such resources are readily available, both geographically and economically. We agree that it is important that any miner who admits to use of prohibited substance not be deemed to be in violation of the program, and maintain job security and not be disciplined for the self-reporting.

Furthermore, the SAP should be "conveniently located," and available at a convenient time, following the same general rules that cover the location of certified facilities for chest x-ray surveillance purposes. (42 CFR 37.2 (d))

66.300 Purpose and scope

Under this proposal MSHA proposes to incorporate the Department of Transportation Part 40 alcohol and drug-testing procedures. MSHA proposes testing for ten substances as opposed to the five tested under DOT. Mine operators would be offered the option to use service agents to perform the functions required by this proposal

including services for collection of urine specimens, a certified Breath Alcohol Technician (BAT), a laboratory, Medical Review Officer (MRO), and a Substance Abuse Professional (SAP). Because the Agency has required testing for ten substances, MSHA requires that laboratories that conduct testing under this rule be certified by the College of American Pathology (CAP) to perform Forensic Urine Drug Testing for the additional substances specified by this rule. Although MSHA proposes to adopt DOT part 40 requirements, it does not propose to monitor or review the performance of service agents, including laboratories used by mine operators to comply with the proposal's requirement.

The Union generally does not oppose operator use of certified facilities and agents under the HHS and DOT, however once again we question the availability of such facilities in rural communities both in Appalachia and the West where a number of mines are located. An examination of the State List of HHS Certified Laboratories indicates that no HHS Laboratories are located in major coal states such as West Virginia, Illinois or Kentucky. If specimens must be transported great distances to other states, there is an increased possibility of tainted specimens due to exposure to heat and conditions of transport. If drug and alcohol testing is to be conducted in the mining community, the rules must require that the laboratories doing the testing be at least as reliable. We further object to relying on DOT testing programs, especially when they could be changed for issues that may arise in the transportation industry as opposed to the mining industry.

66.301 Substances subject to mandatory testing.

This proposal lists substances for which testing will be conducted, which includes alcohol and ten drugs.

The UMWA offers no comment on this proposal.

66.302 Additional testing.

This proposal provides that the Secretary of Labor shall be permitted to designate additional substances for which mine operators must test.

The Union opposes the provision that would allow the Secretary complete discretion to add additional items to the list of prohibited substances. Rather any such designation shall be considered a rule-making and shall be governed by the same procedures that cover other rule-makings. We also object to the rule's failure to require any later-added substances to be referenced in any employer's written program. As written this section would violate due process. Before any changes are made to this list, the operator must meet with the Representative of the Miners to allow their input. Before an updated list is implemented all miners must be made aware of any changes through additional training sessions.

66.303 Circumstances under which testing will be required.

This proposal would follow DOT part 40 guidelines and require testing in the following circumstances: Pre-employment testing, random testing, post-accident testing, reasonable suspicion testing, and as a part of a return-to-duty and follow-up process for miners found to be in violation of the alcohol and drug prohibitions.

The Union points out that most of our members' employers already have drug-testing programs in place and have had them for many years. Our members have been tested under these circumstances, so this will be nothing new to the UMWA. Nevertheless, making this mandatory is offensive, especially since it will require limited Agency resources to be focused on a relatively insignificant issue.

66.304 Pre-employment testing

This proposal requires operators to require a pre-employment test before hiring new miners, or having them perform safety-sensitive jobs.

Once again, our members have been subjected to pre-employment alcohol and drug screening for many years, so this is nothing new to the UMWA.

66.305 Random testing.

This proposal would require random, unannounced testing on miners who perform safety-sensitive job duties.

UMWA miners who work at our larger employers have been subject to alcohol and drug testing since the 1980's. The UMWA has worked with mine management to resolve whatever issues regarding these programs we may have had disagreement about and most miners have been subject to alcohol and drug testing for twenty years or more. Random testing has always been a part of those programs.

"Random" should be defined in sufficient and better detail so that anyone in the industry can understand what it means and so that it does not come to mean "arbitrary." All personal on mine property are subject to random-testing.

66.306 Post-accident testing.

The proposed rule would require that post-accident tests be conducted of miners involved in the accident whenever an accident or occupational injury must be reported to MSHA. MSHA also proposes to require toxicology tests of the fatal victims.

The Union is not generally opposed to post-accident testing of surviving miners if/when that maybe warranted, however we feel it is not ethical to test deceased miners. The UMWA questions whether the Agency has authority to do such invasive tests without the victim's family's consent. To propose such a thing is an unethical and immoral intrusion at the family's time of grief. The Union would oppose testing of the deceased and questions MSHA's legal authority to do so without the family's authorization.

Furthermore, if miners "involved in the accident" will be tested, then those tested should include anyone whose actions could have contributed to the accident, which could include the maintenance supervisor who put a vehicle into service without adequately checking it for safety features, and anybody who altered ventilation to allow gas to accumulate, and/ anybody who conducted training that failed to cover all relevant hazards, and the section boss who did not check roof bolting, etc. We do not assume, as this rule does, that accidents are caused by miner's behavior and only by miner's behavior. We believe the proposed rule contains a conflict of interest insofar as mine operators are primarily responsible for determining who will be tested in the post-accident setting. There must be a means by which high-level supervisory personnel will also be tested. We support the requirement that all testing be at the Employer's expense.

66.307 Reasonable suspicion testing.

Under this proposal reasonable suspicion testing is conducted when a supervisor documents observable signs and symptoms that lead him or her to suspect alcohol or drug use.

In MSHA's commentary, it points out that most agreed that reasonable suspicion testing was a useful tool, however several who commented expressed their reservations about whether supervisors, even with considerable training, can readily identify when someone is impaired by drugs. The Union would echo that sentiment. As pointed out in comments on 66.203, supervisors are required to receive a total of two hours of training and one hour refresher annually. Two hours of training would not qualify anyone to identify the signs of someone impaired by drugs. Further as the Union pointed out before, using the section foreman to initiate reasonable suspicion testing would open the door to abuse of this privilege. Whenever there is a dispute on the working section, those in disagreement could easily become targets for such testing because of a grudge. The person charged with this responsibility must be independent and well trained to recognize the signs of drug use. The foreman may suggest to the person in charge that he suspects a miner may be impaired. However, the decision as to what action taken, and whether any miners should be tested for "reasonable suspicion" should not be left to the section foreman. We suggest that a minimum of two persons be required to confirm objective bases for any testing under this section.

See our comments above concerning the definition of reasonable suspicion. Anybody that works in a mine can have problems with drugs or alcohol and this includes

supervisors as well as miners. Therefore, anybody should be able to suggest testing for reasonable suspicion and that opinion should be reviewed by some other person, specifically, another supervisor.

66.400 Consequences to miner or supervisor for failing an alcohol-or drug-test or refusal to test.

This proposal would require the mine operator remove a miner or supervisor with a positive alcohol or drug test from safety-sensitive job duties. The miner could not be terminated for the first offense and would be provided job security while the miner seeks appropriate evaluation and treatment. For subsequent violations, it would be up to the mine operator to specify appropriate disciplinary steps, up to and including termination.

The Union believes that those who have alcohol or drug additions should be given ample opportunity to rehabilitate themselves. Subjecting that person to possible termination after the first offense would not provide such an opportunity. We also recognize that there may be those who are beyond rehabilitation and offering those people multiple chances to recover would not work. However, the rules must provide compassion for those who are struggling with addiction, but trying to recover. Twenty chances would be too extreme, but one chance would be the extreme of the opposite. A compromise must be struck somewhere in the middle. If a recovering addict falls off the wagon just once after his first offense, he could be subject to termination under this proposal. The loss of employment to a person in such a vulnerable state would be devastating and they likely would take a downward turn back to the addiction to deal with such a life challenge. Addicts most often struggle all of their life with their addiction, even after they have recovered. Ask any person associated with rehabilitation programs such as Alcoholics Anonymous and they will tell you that a recovering addict continues to struggle with their addiction even after they are clean and often do fall off the wagon. If a person is honestly trying to recover, has asked for the opportunity to continue treatment and is showing an honest effort to reform themselves, this effort must be acknowledged and encouraged, not punished. This is no way to make policy. It reveals a peculiarly American fetish for reductionist technical solutions – quick fixes – to complex social (and medical) problems. For the person dependent on drugs, the slogan, “just say no” has about as much positive effect as telling a person who is clinically depressed to “just cheer up.” Drug and alcohol addiction is a much more complicated social and medical issue that should be dealt with compassionately. Moreover, the ADA requires certain accommodations for covered persons.

Consequently, the Union urges the Agency to develop a rule that provides guidance in dealing with an addicted person beyond the first offense and provide job protection while they are recovering. Providing a rule to govern the actions taken past the first offense also puts everyone on a level playing field in dealing with addicted employees. However, one offense and your fired is too harsh. Even the “Three Strikes and Your Out” law passed under President Clinton proposed three offenses for those who commit violent crimes repeatedly before they were dealt serious punishment. A

person with an addiction problem should be provided at least as much consideration as a violent criminal. Therefore, the Union urges the Agency to reconsider the rule to provide additional measures for addicts to rehabilitate themselves.

As the Agency points out, rehabilitated miners are often an improvement to safety and provide a positive role model to others. A rehabilitated miner also assists the mine operator in retaining valuable employees. There is a benefit to all when these miners are provided the support and encouragement they need to rehabilitate themselves while maintaining employment and a productive life.

66.401 Operator actions pending receipt of test results

This proposal would require that a miner or supervisor be removed from a safety-sensitive job while awaiting the outcome of an alcohol or drug test when performed for "reasonable suspicion" or their role in an accident. The proposal would require that no action adversely affecting the miner's or supervisor's pay and benefits be taken while in wait of pending test results.

The Union would support this proposal. If a person is suspected of alcohol or drug abuse, they should be placed out of harm's way to themselves and others. Placing them in alternate work is the best solution while test results are pending for cause-related testing. The Union would agree that the miner's pay and benefits must be protected.

66.402 Substantiating legitimate use of otherwise prohibited substances.

This proposal provides the miner with an opportunity to demonstrate that the use of prohibited substances has been authorized by a physician. It further specifies that the possession of a valid prescription alone is not sufficient proof of legitimate use. Under this proposal, the MRO may conduct a medical interview with the miner, review his/her medical history up to and including contacting the miner's physician.

The Union would question the authority of the MRO to consult with anyone's physician. HIPPA regulations may conflict with this proposal. The Union asks for more information about how this proposal will protect miners' bonafide interest in maximizing the privacy of their medical records.. The proposal indicates that even when the miner has provided proof of a valid prescription, the MRO can still determine that the prescription is not being taken as directed or that unauthorized use has occurred. The miner's primary physician's assurance that the medication has been prescribed, is being used as prescribed and will not interfere with the miner's job performance is all the assurance one should need. The MRO is being put in the position of making a judgment as to whether the miner is under proper care by their physician and should not have that authority. For this reason, the Union would oppose any attempt by an MRO to challenge a miner's prescribed treatment by a physician. If the MRO is to consult with the miner's

physician, he should do so only with the miner's written permission. Failure of the miner to grant this permission shall not constitute a breach of this rule.

66.403 Operator actions after receiving verified test results.

This section specifies the actions mine operators must take upon receiving a positive alcohol or drug-test result. The miner must be immediately removed from performance of safety-sensitive job duties and referred to a substance abuse professional.

As the Union has pointed out throughout its comments, we agree that anyone found to be under the influence of alcohol or drugs must be removed from a job that could put themselves or others in danger. However, this proposal does not protect the miner from retaliation for subsequent offenses. As we have repeated throughout our comments, we believe that alcohol and drug addiction is a serious illness and must be treated as such. A recovering addict must be provided patience and time in overcoming an addiction. Recovery does not happen overnight as this rule suggests. The miner must be provided enough assistance and encouragement to insure they have sufficiently overcome their addiction before being placed in a safety-sensitive job, but they should be permitted to continue to work, out of harms way in other job duties until they are reformed, clean and ready to come back to their former job. This provides the miner an opportunity to maintain some self respect and his/her dignity while on the road to recovery. An experienced miner is a valuable asset to the mining community and the operator. He/She should be provided a compassionate means of dealing with a complicated social problem.

Section 66. 404 Evaluation and referral

The proposed rule would require the operators to offer job security to those miners who are first-time offenders provided they follow the SAP treatment recommendations and required return-to-duty procedures. For subsequent offenses, mine operators would have the discretion to specify disciplinary consequences, up to and including termination.

The Union would reiterate its comments on section 66.400 here. Furthermore, allowing the mine operator complete discretion as to what actions are taken if a second offense is detected leaves the door wide open for abuse. The industry is currently experiencing its latest "coal boom." The coal industry was depressed for nearly thirty years starting around 1980 until now. During that time, operators did not hire many young miners and the workforce they had was aging. Most of those experienced, aging miners are now ready for retirement, leaving the industry to compete for what experienced miners are out there looking for work. Most of those who are experienced manage to gain employment with the larger coal operators, where there is more job security. What miners are left, go to work for small operators who struggle to maintain an adequate workforce to operate their mine. If those small operators are left with the

choice of whether they have enough employees on hand to operate their mine, or if a miner is found to be a second offender what do you think the operator will do? Do you think they would choose not to operate the mine for a while until the offending miner is rehabilitated or they find a replacement for him? We think not. When such a situation is presented, that operator is going to choose to produce coal regardless of the circumstances. Consequently, this standard will not be enforced the same at all operations if such decision-making is left to the mine operator. To the extent the purpose of this rule is to insure working miners are not impaired, then the rule must require uniform treatment. Otherwise, there will be unequal application of this rule. Everyone must be required to play by the same rules on all levels. Also, we are concerned about whether appropriate and affordable programs are available for miners needing help. The proposed rule does not require an employer to pay for an SAP or other treatment; we suggest this be changed so miners will be more likely to get help when needed.

66.405 Return-to-duty process

This proposal of the rule specifies that prior to returning to performing safety-sensitive job duties, miners must follow the treatment recommendations of the SAP, be re-evaluated by the SAP, and comply with the testing requirements established by the SAP. The proposed rule points out that although the SAP verifies compliance with the recommended treatment, it is the mine operator who decides whether the miner will return to work performing safety-sensitive job duties.

Once again the rule leaves the door wide open for abuse. The decision as to whether a person returns to "safety-sensitive" job duties must not be left to the mine operator. As pointed out in our comments on 66.404, if a small operator is faced with making a decision that could determine whether his mine operates for the day or not, he is likely going to opt to produce coal. The rule must require the returning miner be placed in alternate work until he has been given adequate time to prove that he/she has successfully completed the recommended treatment; has passed the return-to-work tests and is well on the road to recovery. If an addict is going to "fall off the wagon" it is going to most likely be in the short term after completing the program. The proposed rule subjects the rehabilitated miner to unannounced tests in the first 12-months following his return to work and continuing for a maximum of 24 months. If an addict is going to return to using prohibited substances, that 24 months should be used as a trial period to make sure the miner remains alcohol /drug free. Should the miner test positive during their 24- month recovery period, he should be placed back into rehab and provided alternative work. The rehabilitation of a person addicted to alcohol or drugs does not occur overnight. This rule treats a serious illness as one that can be cured overnight. The addicted miner must be provided sufficient time to recover. Any ADA accommodations must be factored in, too.

66.406 Return-to-duty and follow-up testing.

Return -to-duty testing is a one-time announced test that is required when a miner who tested positive in the past has completed required treatment and is ready to return to a position that involves performing safety-sensitive job duties. Follow-up testing is conducted with a minimum of six unannounced tests in the first 12 months following return to work and continuing for a maximum of 24 months.

As the Union pointed out in comments on 66.405, we feel that 12-24 month follow-up period should be used as a "recovery period" for the miner to make sure he/she has overcome their addiction. During the 12 – 24 months the miner should not be placed in a "safety-sensitive" position. They should be provided alternative work and tested during that period to make sure they are well on the road to recovery.

66.500 Recordkeeping requirements.

This proposal specifies that records of alcohol and drug-test would be protected as confidential communication between the mine operator and the miner. The proposal also prohibits sharing such records with others and requires secure storage so the records cannot be accessed by unauthorized individuals.

The Union would agree with this proposal in spirit. However, the proposal fails to provide adequate safeguards. It is important that the miner's privacy be protected. Greater specificity is required. The rule should specifically limit who can have access to records and the operator should face sanction if the miners' confidentiality is breached.

MSHA states in the preamble to this proposed rule the following commitment to developing an understanding of the extent of drug and alcohol use among miners:

"MSHA, the mining industry, and individual mine operators can all benefit from establishing an accurate quantifiable baseline of alcohol and drug problems, and tracking trends over time that result from the proposed rule. Consequently, the proposed rule would require mine operators to keep records on the number of miners in safety-sensitive job positions that are covered by the rule and results from the various types of tests performed. . . Under the proposal, MSHA would be able to analyze the information, which would add to an understanding of the extent of alcohol and drug abuse among miners and to what degree such use contributes to accidents and injuries." p 52151

We agree that it is important to gain an accurate understanding of the extent of drug and alcohol use among miners. But we raise two concerns. First, many mine operators have substance abuse programs in place now that are very similar to the program in this proposed rule – pre-employment testing, post accident testing, random testing, testing on suspicion, and return to work testing. Many programs have been in place for decades. Doubtless, miner operators already have an abundance of data on such problems and the

extent to which they are associated with accidents and injuries. MSHA is not the first to address this problem. Did MSHA request this information from mine operators prior to drafting this proposed rule. Did MSHA take advantage of these data “. . . to analyze the information, which would add to an understanding of the extent of alcohol and drug abuse among miners and to what degree such use contributes to accidents and injuries.”? It appears not only that they did not but that they do not recognize this shortcoming as a significant weakness in this proposed rule.

Our second concern is this: MSHA states that information acquired according to this rule would be valuable and made available to MSHA and to “the industry.” The industry includes, or should include, the unions that represent miners. If the unions are to fulfill their responsibilities of fairly representing miners for purposes of collective bargaining and for other purposes, it is essential that the union be well informed and, in particular, should be able to obtain the same information as is made available to MSHA and to “the industry.” Confidentiality, as stated, of these records is essential. Therefore, for these records to be made available to the industry, including unions, the names and any other information that would identify individual miners should be purged prior to their being made available to anybody – MSHA or the industry or unions. If a list with names is made available to “the industry,” it could easily become a black list for denying employment to miners.

Additional Concerns

*Both as a matter of policy and as a matter of law, the UMWA suggests the proposed rule is ill-advised and should be withdrawn. Insofar as the U.S. Supreme Court has determined that mandatory drug testing programs that require private sector employers to test their employees for drugs implicate the Fourth Amendment protection against illegal “searches,” *Skinner v. Railway Labor Executives Assoc.*, 489 U.S. 602, 617 (1989), the UMWA contends this proposed rule, on its face, is unconstitutional. While some drug testing programs have been deemed lawful, that is only when the particular testing programs were reasonable and justified by “compelling governmental interests in public safety or national security,” *Id.* at 620. Here, the Agency has not suggested there exists, much less provided, any objective evidence of a compelling government interest to support drug testing of miners who work for private industry employers operating on private property. Likewise, MSHA has not shown that impaired coal miners in any way jeopardize the public safety. Instead, it simply suggests that drug/alcohol problems in the mining industry reflect what is happening in society, generally. 73 FR 52139.*

Even the experience with high-profile accidents is markedly different between the mining industry and the transportation industry (the latter for which testing has been upheld.) Congress mandated drug testing in the transportation industry after the conduct of impaired employees was found to have caused multiple high-fatal accidents. In stark contrast, the only high-profile accidents in the mining industry resulted from operator misconduct and a lax Agency, not impaired employees. As recently as its 2006

legislation, the MINER Act, Congress considered, but decided against adding drug/alcohol testing requirements.

Even if MSHA could show some compelling government interest, such testing still would be balanced against the miners' reasonable expectation of privacy before it could satisfy a Fourth Amendment challenge. See, Harmon v. Thornburgh, 878 F.2d 484, 488 (D.C. Cir. 1989). In any event, this proposed testing program fails the Constitutional standard. The Agency relies on anecdotal reports (as opposed to objective evidence) of improper drug usage, and fails to establish there is any immediate and direct threat to public safety against which the rule would protect. United Teachers of New Orleans v. Orleans Parish School Board, 142 F. 3d 853 (5th Cir. 1998).

Further, the proposed rule is too broad. It intrudes on miners' rights and expectations of privacy. Never before has the government used the bodies of miners as part of its enforcement scheme. The proposed rule also is inconsistent with many collectively bargained programs that are already in place at coal mines. MSHA has offered no evidence that the existing programs do not work well or leave miners at risk. The proposed rule is also too broad insofar as it covers too many miners, instead of only any whose jobs have a direct and immediate relationship to public safety. The Supreme Court's decision in National Treasury Employees Union v. Von Raab, 489 U.S. 656 (1989) suggests that there must be a "clear, direct nexus . . . between the nature of the employee's duty and the nature of the feared violation" for random drug testing to pass constitutional muster. See, Harmon v. Thornburgh, 878 F.2d at 490. MSHA does not claim that all miners pose a threat to public safety though all who are subject to Part 46 and 48 training would be covered by these testing programs. MSHA must identify which job functions it contends pose a direct threat to public safety, and we must have a chance to comment, before MSHA could advance such a rule. It is improper to rely on the training provisions (which serve a different purpose) to determine which miners hold jobs that arguably could threaten public safety. The proposed rule is also too broad insofar as it requires many kinds of testing. At a minimum, the random testing provisions on virtually all mine employees should be struck as too broad. Transportation Institute v. U.S. Coast Guard, 727 F. Supp. 648 (D.C. D.C. 1989). And failing to limit post-accident testing to those reasonably deemed to be at fault is overbroad. United Teachers of New Orleans v. Orleans Parish School Board, 142 F. 3d 853, 857 (5th Cir. 1998).

MSHA has previously refused to regulate hazards to miners without a substantial body of scientific evidence demonstrating that existing conditions in mines pose a risk to their health. MSHA has stated that it will not regulate unless it can show a significant risk from exposure in mines. The level of scientific information MSHA requires before regulating known toxic hazards to workers is rigorous. Yet, this record contains nothing objective to suggest that the mining industry has any more, or a different kind, of problem with impairment than any other industry; certainly the kind of evidence that MSHA requires for the health hazards we have separately urged it to regulate is absent from this proposed rule. The showing required by MSHA to establish a "compelling governmental need" under the Fourth Amendment must be at least as rigorous as that required by Section 101 of the Mine Act. MSHA has made no

effort to demonstrate a scientifically valid basis for believing that miner impairment is a widespread safety issue in mines.

The proposed post-accident testing program is also unconstitutional because it does not require a reasonable basis to believe the employee to be tested was impaired, or that his conduct may have contributed to the accident, or that the employee otherwise violated the proposed regulation. For such a search without a warrant, more is required to pass Constitutional scrutiny. Moreover, the proposed rule is too broad insofar as it would require testing for every incident involving a reportable injury or illness, not just those that involve a threat to public safety. Because protecting public safety is the only way MSHA can claim a compelling need for a drug testing program, there must be some connection to either that compelling need or a reasonable basis for believing that a miner violated MSHA rules before post-accident testing can occur. Being in the wrong place at the wrong time should not be enough to subject a miner to such testing, especially in the private sector. Finally, not only it would be morally wrong, but there is no basis offered for post-mortem testing of deceased miners – irrespective of whether the family might object, or if testing might conflict with the deceased miner's religious beliefs - unless MSHA would have reasonable grounds to believe that the miner's impairment was related to a violation of Mine Act rules.

MSHA's proposal for treatment is also offensive. First, a single, positive drug test may not reveal a miner has a disease warranting treatment. Second, even if a miner does have a substance abuse problem, that problem likely results from conditions outside the mine and, therefore, is outside MSHA's regulatory jurisdiction. MSHA's only interest is in ensuring that miners are not impaired while performing safety-sensitive mine duties. Further, there is no basis for mandating treatment for substance abuse when neither MSHA nor OSHA mandate treatment for any other work-related health effect. Miners with excessive exposure to coal dust who are at risk of fatal illness get medical surveillance, but are not required to seek treatment. There is no reason to think that a positive drug test places a miner at greater risk of disabling illness than does exposure to coal dust or other toxins. Further, treatment for a positive drug test may conflict with miner privacy and religious freedom. Mandating treatment reaches far beyond any legitimate interest MSHA may have in drug-free/alcohol-free mines.

Second, there is no evidence that recommended treatment will be effective in improving health and safety at mines. In all prior standards, MSHA has demonstrated that its proposed method of compliance will be effective in meeting health and safety goals. For example, MSHA could not require mine operators to purchase and install equipment that is ineffective at reducing the risk posed by a regulated hazard. Likewise, MSHA may not mandate treatment methods for which there is no evidence of effectiveness. Here, MSHA has made no showing that the required compliance will meet its stated health and safety goals. MSHA must also demonstrate that mandatory treatment is economically feasible. Further, the proposed rule contains no requirement that the SAP recommend appropriate treatment or that miners have an opportunity to question whether another treatment would be equally as good. The rule inappropriately allows the mine operator to select the SAP to whom a miner will be referred and then prohibits any

other health care professional from questioning the SAP's recommended treatment. It is improper to prohibit a miner's physician from opining that treatment is not necessary or that another type of treatment is equally or more appropriate.

MSHA should also ensure that an SAP does not have any proprietary or other interest in the treatment programs the SAP recommends. For example, it would be improper for MSHA to prohibit the second-guessing of a recommendation made by the only SAP in town when a miner must attend that SAP's expensive rehabilitation program before he could return to work. Miners also must be able to obtain treatment consistent with their religious beliefs, and not be forced to attend a program that would be incompatible with their beliefs. Miners should be able to select treatment options consistent with their health insurance coverage, if any.

Nothing in the Act mandates treatment of medical conditions. The Act requires that miners who are removed from exposure to mine-related hazards should suffer no loss of pay as a result. This proposed rule is incompatible with these provisions, especially with regard to miners who are prescribed pain medication to treat a work-related injury and are then removed from work because the medication made necessary by their work-related injury effectively removes them from work.

The Administrative Procedure Act requires MSHA publicly to disclose any significant data or analysis on which its proposed rule is based so that interested parties may comment on that data. See Portland Cement Ass'n v. Ruckelshaus, 486 F.2d 375 (D.C. Cir. 1973). MSHA's failure to do so is grounds for invalidating any rule it may promulgate. Here, we have been unable to obtain data on which MSHA relied to support this proposed rule.

Although MSHA claims it is partly relying on existing DOT regulations, it fails to identify upon which of the lengthy regulations it plans to rely; without such a designation, it is impossible to comment about how those rules may/not pertain to the coal mine industry. By failing to identify exactly which provisions it plans to include in its own rule, MSHA has deprived us of the chance to fully comment. We are entitled to more specificity before we can complete our comments on this matter. Moreover, if the DOT regulations would change, there would be no opportunity for this regulated community to influence those changes; it is impossible to comment now about how any such adjustments might affect the mining industry, yet it would be immediately impacted.

This proposed rule contains numerous problems. Now this rulemaking process, and later any related enforcement expenditures, represent a waste of valuable Agency resources. We suggest this effort be scrapped in favor of far more compelling health and safety hazards.

**Comments of the United Mine Workers of America
On The Proposed Rule For
Alcohol – and Drug-Free Mines: Policy, Prohibitions, Testing, Training
and Assistance**

Introduction

The UMWA does not support the Agency's actions in proposing a new regulation to require testing for Alcohol and Drug use in the mining industry. The UMWA does not want anyone who is under the influence of drugs or alcohol working in our mines, nor do our members want to work next to them because lives are jeopardized when a worker's judgment is impaired. However, we do not believe that this is as great a problem as it has been portrayed in MSHA comments. We have worked with dozens of our members' employers to implement drug and alcohol testing programs because we remain committed to creating the safest and healthiest environments for our miners and that cannot happen when a coworker is impaired. These programs have been in place for a number of years and have been successful in providing the assistance needed when a miner has an addiction problem. If the problem is already being addressed by the industry through its own programs and policies, why does MSHA see a need to act on this issue that in reality presents minimal risks in an industry still plagued by compelling and well-documented health hazards the Agency refuses to address?

The majority of the industry (80%) already has drug-testing programs in place. Further, some states (Virginia and Kentucky) also have regulations governing alcohol/drug testing. The Agency indicates that within the mining industry, nearly four out of five workers report that companies perform alcohol and drug test on a pre-employment basis, which is nearly double the reported all-industry average. Similarly, nearly three-quarters of those working in the mining industry report random testing, which is more than double the reported all industry average (of nearly 30 percent). If the industry already has in place alcohol and drug testing programs which far exceed any other industry, why has MSHA chosen to pursue this rule with such vigilance when many other legitimate health and safety issues in the industry are neglected? The Union contends there is not a significant problem in this area to justify spending government resources to duplicate what the industry is already doing.

Further, statistics do not support the urgent need that is being proposed as the justification for this rule. Reading the Agency commentary on this rule, one would think that drug and alcohol abuse in our nation's coal mines is running rampant. The Agency admits that an internal DOL review of accident reports failed to reveal a significant number of cases where alcohol or drugs were determined to be causative factors. Alcohol and drug use is a complex social and medical problem that warrants a more compassionate approach than is proposed here. Mine operators should be provided the flexibility to work with miners to find the best programs suited to their specific problems, work sites and communities. A boilerplate standard, as proposed, does not provide the people involved in such a complicated issue the flexibility to design their program to fit

their individual needs. Therefore, we would urge the Agency to let the industry continue to do what it has been doing to resolve this "perceived problem."

The information that MSHA has disseminated in support of the proposed rule on substance abuse¹ does not meet the requirements of the Information Quality Act² or of the guidelines developed by the Department of Labor³ as required by the Office of Management and Budget and by the Information Quality Act. It is completely devoid of any quantitative measure of the prevalence of substance abuse among miners, in mining communities, among miners involved in accidents, and among prospective miners. With information of such fundamental utility absent in any form, it is impossible to allocate resources in a rational manner, to evaluate program effectiveness, or to develop or implement policy. In a word, it lacks utility. Such data being non-existent, evaluating its quality, integrity, and objectivity as required by the Act is likewise impossible. It lacks any reference to scientific findings concerning the relationship of substance abuse and the occurrence of occupational accidents and injuries in spite of numerous pertinent peer-reviewed publications in the scientific literature.

66.1 Purpose

This proposed rule establishes the requirements for mine operators to develop an alcohol- and drug-free mine program to prevent accidents, injuries and fatalities resulting from the misuse of prohibited substances by miners performing safety-sensitive job duties.

As the comments above point out, the Union does not think there is sufficient evidence to warrant the use of government resources to develop and enforce rules on alcohol and drug testing. The Agency's own analysis of fatal accidents from 1975 to 2007 revealed that 24 of 978 reported deaths involved alcohol or drugs and it is unknown whether alcohol or drugs were contributing causes. This equates to 2.4% of the total fatalities over a thirty-two year period. From 1983 through 2007 there were 593,047 non-fatal accidents reported, with 56 possibly involving alcohol or drugs. This equals 0.009% of total accidents over a twenty-four year period. There is no evidence showing that alcohol and drugs make a significant contribution to fatalities and injuries in the industry. Factor in that the majority of the industry (80%) already has drug and alcohol

¹ U.S. Department of Labor, Mine Safety and Health Administration. Alcohol and Drug-Free Mines: Policy, Prohibitions, Testing, Training, and Assistance, Proposed Rule. September 8, 2008. 73 FR (174): 52136-63.

² U.S. Congress. Treasury and General Government Appropriations Act for Fiscal Year 2001, PL 106-554, Sec. 515. December 21, 2000.

³ U.S. Department of Labor. Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Department of Labor. October 1, 2002. URL: <http://www.dol.gov/cio/programs/InfoGuidelines/InfoQualityGuidelines.pdf> November 7, 2008.

programs in place, we do not understand why the Agency sees an urgent need to pursue these standards. The Union feels our tax dollars would be better spent developing rules to protect miners from hazards that actually are killing them. For example, for a number of years the UMWA has aggressively sought actions from MSHA to protect miners from respirable coal and silica dust, yet nothing has happened. Data published by the National Institute for Occupational Safety and Health show that black lung is once again on the rise, afflicting thousands of miners, even younger ones who have been working in the industry only a short time. Actions in this area would save far more lives in our industry and would be a more productive use of government resources and taxpayer dollars.

In fact, in none of the recent major coal mine disasters - Sago, Aracoma, Darby and Crandall Canyon- was there any indication of drugs or alcohol being contributing factors to those accidents. Indeed, in each of those tragedies, the actions or inactions of mine management and MSHA itself were to blame. Following the reasoning of this proposed rule, members of mine management and MSHA should be subject to post-accident testing. We can't help but find it more than coincidental that the Agency proposed this rule in the wake of devastating reports about MSHA's actions in the Crandall Canyon tragedy. We suggest the timing serves to divert attention from the important health and safety issues of the day. The Union would urge the Agency to use its resources more productively to address issues that are genuine threats to coal miners' health and safety.

66.2 Applicability

This proposal would require that alcohol and drug testing only for those who may be required to perform safety-sensitive job duties. Management and administrative personnel who supervise the performance of safety-sensitive positions are also considered to hold safety-sensitive positions. The proposed rule indicates that "safety-sensitive jobs" would include anyone who must take comprehensive miner training under 30CFR parts 46 and 48. The proposal indicated that this standard would include contractors. General administrative and clerical personnel would be excluded from the rule. MSHA seeks comments about the determination of who performs safety-sensitive job duties and is, therefore, required to be tested and trained.

MSHA has indicated that a "safety-sensitive job" would be one performed by miners who are required to take training under Part 48. However, MSHA has chosen to exclude administrative and clerical personnel from the drug testing requirements. The proposed rule is additionally not clear on which supervisors would be included in the alcohol and drug testing. The Union would question the Agency's rationale for these exclusions. The Superintendent of the mine does not normally supervise persons in a safety-sensitive job on a regular basis, but he is responsible for miner and supervisor training, for maintenance policy, and for mine design and operation. Insofar as the rule proposes that any "miner involved in any work activity that could have contributed..." shall be tested ..., we submit that the mine superintendent should be subjected to post

accident testing following every accident at that mine. (The only reason he probably would escape is that upper management has discretion to decide who “could have contributed”, presenting an inherent conflict of interest.)

In addition, administrative and clerical personnel are often used to run errands, driving vehicles to and from suppliers, etc. They often also deliver supplies or parts for equipment repair into the mine. Excluding them from testing exposes miners to the effects of their job performance; if they are impaired miners could be adversely affected. Often we hear that “safety is everybody’s responsibility.” Unless this is idle rhetoric, everybody should be covered under this rule. If miners must be tested, then so should everybody else who enters the mine property. Anyone working on mine property would be exposed to the hazards of the surface area of the mine site. Often this includes the use of heavy equipment such as end loader and dozers; the movement of track vehicles and motor vehicles used for transport and supply purposes. Those doing these jobs as well as those exposed to these hazards should be tested for alcohol and drugs like the underground miners. We agree with the proposal to include all operations regardless of size.

66.3 Definitions

This section of the proposed rule defines the terms used in the context of this rule.

Breath Alcohol Technician (BAT). Under this proposed definition, the Breath Alcohol Technician (BAT) can be an employee of the mine operator. The BAT, MRO or SAP must not be employees of the mine operator. If these individuals, who are supposed to be professionals are employees of the mine operator no one will believe that they will conduct themselves in a fair and impartial manner. Their loyalty will clearly lie with their employer and not with the miner being tested which opens the door to discrimination and the use of these rules for unjustified and discriminatory disciplinary actions.

Medical Review Officer. Under this proposed definition, the Medical Review Officer (MRO) can be an employee of the mine operator or a service agent. The MRO must not be an employee of the mine operator. The loyalty of that licensed professional will be questioned if he/she is an employee of the mine operator. Doing so harkens back memories of abuses of the “Company Doctors” employed throughout the coal fields in years gone by. If this process is to be fair and impartial, the MRO must be an independent source and not employed by the mine operator. To permit otherwise will create unnecessary distrust of the miners and a possible subterfuge for discriminatory treatment.

Prohibited substances.

Comment: Nowhere in this rule is there a definition of what constitutes a valid prescription, leaving this issue up to the discretion of the mine operator or a medical professional. A simple definition already exists, and it can be readily evaluated by anyone, and should be added: "A valid prescription consists of a controlled substance in an appropriately labeled container."

A problem, however, not addressed by this rule is one of medical confidentiality. Many medications that could fall under this rule are treatments for conditions that miners would rather keep confidential, yet there is no provision whatsoever here or elsewhere that would protect a miner's privacy. This is a serious shortcoming that MSHA should address. Another problem is the unfettered discretion left to the Secretary to expand the list of covered substances, and the failure to address how any changes to the list of prohibited substances would be handled (notice, training, test procedures, etc.)

Reasonable suspicion testing. (We recommend replacing the proposed definition with the following: Testing for alcohol or drugs conducted when any person observes possible signs and symptoms of any other person on mine property that suggest alcohol or drug use in violation of the alcohol- and drug-free workplace policy, and the person who suspects such use receives confirmation of possible violation by bringing this problem to the attention of his superior(s) for confirmation.

Comment: Any person on mine property can violate the policy. The proposed rule gives to supervisors, and only to supervisors, the authority to require testing for reasonable suspicion. Not only does this exempt supervisors' from reasonable suspicion testing, it provides for no oversight of the supervisors judgment. The suggested replacement allows any person to "reasonably suspect" drug or alcohol use and provides for oversight in the form of a second opinion.

Substance Abuse Professional (SAP). The UMWA recommends replacing the existing proposal with the following: A licensed mental health professional who can evaluate miners who have violated a mine operator's alcohol- and drug-free workplace policy and makes recommendations concerning education, treatment, and aftercare.

Comment: Alcohol and drug addiction are recognized mental disorders (See the Diagnostic and Statistical Manual, version IV) and should be treated by a licensed mental health professional. Such problems should not be "treated" by people that are not recognized (i.e., licensed) as such. Furthermore, once a miner has been referred to an SAP, the loyalty of that professional should be to the miner and consequently, he or she should not be a part of any procedure (such as a schedule of drug or alcohol testing) that could lead to disciplinary action. The SAP could order tests by himself but only for use in treatment.

Substituted Specimen. The UMWA recommends modifying it to read as follows (changes are underlined). A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine from a healthy person.

Comment: Abnormal values of creatinine and specific gravity can both be indicators of underlying disease and a miner with an alleged substituted specimen should first be referred to his own physician.

66.100 Prohibited substances

This proposal requires that prohibited substances not be permitted or used on or around mine property. Paragraph (b) would exempt those who have a valid prescription for the substance and are using it as prescribed. The Medical Review Officer would verify that the miner has a valid prescription and is using it as prescribed.

MSHA indicates that the most prevalent drugs of concern in the mining industry include alcohol, marijuana, cocaine, opiates, methamphetamines and prescription painkillers, most notably methadone and oxycodone. The Agency cites National statistics on the use of prescription drug misuse as the second-ranking drug threat in terms of prevalence, and findings of the Mine Substance Abuse Task Force that rates of prescription drug misuse in the Appalachian mining region may be higher than the national findings. Neither of these sources reveal anything about such use or mis-use among miners at work. Thus, they do not serve to support the proposed rule. Moreover, testimony during the Task Force investigation indicated that much drug dependency among miners can develop from the legitimate use of prescribed painkillers. This is not surprising because miners work in one of the most hazardous industries in the United States. One could expect miners, who have been injured, would be prescribed pain-relieving medications by their physicians in the process of recovery. Some of these medications such as oxycodone are known to be highly addictive. When one looks at the overall picture, it is not surprising that the Task Force would make such a conclusion. The Union does not deny that some of these problems exist in the industry, however we do not agree that drug-abuse among miners is as wide-spread as MSHA suggests. When one considers that Virginia and Kentucky have drug testing requirements and most operators have had their own drug and alcohol testing programs in place for many years, it is hard to imagine how so many have been able to slip through the system to create as great a problem as MSHA suggests. Furthermore, given the existence of these programs, it is astounding how little data there is revealing any significant problem. The UMWA is not aware of any objective data linking alcohol and substance abuse to mining accidents. Most data used as justification for this rulemaking is anecdotal, or tied to use among the general population, not miners' much less miners at work.

The UMWA is also concerned about potential conflicts of interest between provisions of this proposed rule and HIPPA laws, such as regarding the MRO's role in validating a miner's prescription. The miner's physician might be limited under HIPPA as to how much information he/she could divulge regarding the miner's illness or

treatment. Before such a proposal is put into place, research should be done to make sure there is no conflict in regulations and that miners' confidentiality is protected without placing them at risk of discipline pursuant to this rule. The UMWA also is concerned that provisions of this proposed rule will implicate the ADA, and perhaps the FMLA. If an employee tests positive under this rule ADA protections may conflict with what is proposed here. Finally, collectively bargained protections cannot be forfeited by operation of this rule and may present conflicts.

66.101 Prohibited behaviors

This proposal requires that miners who have been identified as being under the influence of a prohibited substance shall not be allowed to perform safety-sensitive job duties. If identified as being under the influence of alcohol or a drug, they must be removed from their job duties. If the miner refuses to submit to a drug or alcohol test or has an adulterated or substituted specimen, he also must be removed from his job duties.

The rule references 66.3(p) but there is no such designation in the proposed rule; we treat the proposal as referring to the definition of "prohibited substances." The UMWA's Native American Members have indicated that in most instances, drug testing of the miners at mines located on their reservations is prohibited due to conflicts with their religious beliefs. Any rule that may be put forth must take such conflicts with one's religious beliefs into consideration and make allowances. "Under the influence" is treated as including a positive urine test for drug metabolites. This is a distortion of the plain meaning of the word, "influence," which means ". . . the act or power of producing an effect." (Webster's 9th Collegiate Dictionary). It is well recognized that a positive urine test for drugs or their metabolites is only an indicator of previous (to the test) use and is not an indicator of being "influenced" or impaired by the drug.

Further, as noted in the preamble but not set forth in the proposed rule, MSHA is adopting the cut-off levels used by DOT. By relying on DOT, MSHA imposes on the mining community a different industry set of procedures. If DOT later changes its procedures the mining industry would also be affected, likely without the kind of notice/comment required by the Administrative Procedures Act. Finally, we note that DOT's drug testing resulted from high profile accidents where drug and alcohol had contributed; Congress required changes to DOT's scheme pursuant to needs of the transportation industry. This is factually different from actual experience in the mining industry. Not only have the high-profile multi-fatal accidents of recent history in the coal industry been devoid of drug/alcohol problems, but Congress enacted the MINERAct in 2006. At that time it considered and rejected imposing drug testing for the coal mining industry, and chose not to change these practices within metal/non-metal. For this reason the DOT model should not serve as a model for the mining industry. It is arbitrary to adopt a different (transportation) industry's format and make that protocol affective on an ongoing basis in the mining industry.

66.200 Purpose and scope

This proposal requires the mine operator to establish a written alcohol and drug-free program which includes an education and awareness program for non-supervisory miners, a training program for supervisors and a testing procedure and referrals to assistance for those who violate the rule.

Like the National Mining Association, the Union would question whether the proposed rule would create confusion or conflict with state laws already in place. We agree with the NMA that the proposed changes may cause enormous confusion and pose severe implementation problems where such state laws exist. Furthermore, how would the proposal accommodate voluntary programs that some employers already have adopted? These are all issues that must be taken into account and sufficient time permitted for the mining community to assess the affect the rules will have on all of these issues. For that reason, we agree that more time is needed for those who will be affected by this rule to properly evaluate the rule's impact.

Everybody covered by this rule should receive the same training -- education and awareness and whatever training is developed for supervisors. The plain reason is that everybody covered by this rule should be treated the same. The rule makes the false and insulting assumption that the problem of drug and alcohol abuse is a problem among miners and not among supervisors. This comment also applies to Part 66.202 and 66.203 below.

66.201 Written policy

This proposal would require each mine operator to develop a written policy and provide it to all miners covered by the rule.

The proposed rule would require that a copy of the written policy be provided to the miners' representative or posted on a bulletin board in a common area where the miners do not have a representative. The proposal provides the option to the operators to distribute the policy during the alcohol and drug-free awareness training sessions or to be distributed in an electronic format. The Union insists that a copy of the policy be provided to the miners' representative and would further suggest that the operator be required to distribute a paper copy to all individual miners. It would not be fair to permit this distribution electronically because some miners are not computer users and would not be properly notified.

66.202 Education and awareness program for nonsupervisory miners.

This proposed rule would require the alcohol and drug awareness training program be incorporated into Part 48 training. The training for new hires would be 60 minutes and 30 minutes annually for all non-supervisory miners.

The Union questions how much more training is the Agency going to require to be incorporated into the Part 48 Training Program? The Union insists that these training classes are not included in the already over crammed Part 48 annual retraining classes. Part 48 training has had many additional requirements added through other rulemaking. Even though the Agency has proposed that the additional time be added to the Part 48 training program to accommodate this training, miners are bombarded with so many issues in the Part 48 training that adding one more is too much. This reduces the effectiveness of all the required training and should not be even further affected with the new training requirements of this rule. The Union believes that this training should be a separate and distinct training class for the purposes of the drug and alcohol awareness training. The operator should be required to furnish to the representative of the miners a copy of the training plan fourteen (14) working days prior to its implementation. The miners should also be provided the opportunity to submit comments regarding this plan. A copy of the approved plan should be required to be posted on the mine bulletin board for access to all parties.

The rule as proposed requires the training to be provided by a "competent person..." The UMWA submits that an objective standard be set that includes educational and training requirements. Reviewing MSHA's prepared materials should not suffice for one providing such training. We suggest MSHA certify individuals who will be "competent persons."

66.203 Training program for supervisors

This proposal establishes the guidelines for training for supervisors. The rule focuses on the supervisors' ability to recognize signs of alcohol and drug use; to understand how to refer miners to assistance; and know how to make a determination for requiring a reasonable suspicion or post-accident test.

The Agency is proposing that supervisors be trained to be the front line level of detection for alcohol and drug use among miners. These supervisors will receive a minimum of two hours of initial training with an additional one hour annually thereafter. The Union questions whether two hours worth of training would qualify a person for such a responsibility? Further, the Agency comments that MSHA has already developed materials that can be used to fulfill this required training. Would a two-hour canned presentation available through the Agency be adequate training for supervisors to recognize and deal with such a sensitive issue? We say "No". The Agency also questioned whether it would be wise to spread the authority to initiate such tests too broadly. This leaves the door open to the operators to determine who will be delegated this responsibility and who must receive this training. The Union is concerned that such a broad distribution of authority could be used as a form of harassment in disputes on the working section. This responsibility must be placed with a competent person who is knowledgeable about workplace substance abuse and trained to recognize those signs, not with the section foreman. (Also see comments to 66.202 for this section too.)

The Union also suggests there be a system whereby miners can identify and report supervisors showing indicia of impairment. Miners are not the only ones who may have a substance abuse problem. Supervisors are charged with the many responsibilities in the day-to-day operation of the mine. Many have turned to substance abuse as a means of dealing with those stresses. So we ask who will be charged with observation of supervisors for substance abuse and whether this rule would include them in such observations? We urge the answer to be "Yes" and suggest procedures be added that will allow non-supervisory miners to accomplish testing of supervisors.

66.204 Miner assistance following admission of use of prohibited substances.

This proposal specifies the actions that must be taken by mine operators following the admission of use of prohibited substances by miners. It would require operators to make such miners aware of available assistance through an employee or miner assistance program, a Substance Abuse Professional (SAP), and/or other qualified community-based resources.

This section requires the operator to refer miners who admit to having an addiction problem for assistance through Substance Abuse Professionals (SAP), and/or other qualified community-based resources. The Union agrees that such assistance should be provided to the miner and would support and advocate that they get assistance when needed. We are concerned that there are few Substance Abuse Assistance Programs in rural Appalachian areas where miners live and work. If the miner is to participate in such a program, he likely would have to travel many miles from home to the nearest city to gain access to such programs. If Substance Abuse Programs are to be successful, they must be easily accessible to rural mining communities. The Union would ask that the Agency take a survey of what programs are available and their locations to supply as a resource to the mining community. This part of the proposal can only be meaningful if such resources are readily available, both geographically and economically. We agree that it is important that any miner who admits to use of prohibited substance not be deemed to be in violation of the program, and maintain job security and not be disciplined for the self-reporting.

Furthermore, the SAP should be "conveniently located," and available at a convenient time, following the same general rules that cover the location of certified facilities for chest x-ray surveillance purposes. (42 CFR 37.2 (d))

66.300 Purpose and scope

Under this proposal MSHA proposes to incorporate the Department of Transportation Part 40 alcohol and drug-testing procedures. MSHA proposes testing for ten substances as opposed to the five tested under DOT. Mine operators would be offered the option to use service agents to perform the functions required by this proposal

including services for collection of urine specimens, a certified Breath Alcohol Technician (BAT), a laboratory, Medical Review Officer (MRO), and a Substance Abuse Professional (SAP). Because the Agency has required testing for ten substances, MSHA requires that laboratories that conduct testing under this rule be certified by the College of American Pathology (CAP) to perform Forensic Urine Drug Testing for the additional substances specified by this rule. Although MSHA proposes to adopt DOT part 40 requirements, it does not propose to monitor or review the performance of service agents, including laboratories used by mine operators to comply with the proposal's requirement.

The Union generally does not oppose operator use of certified facilities and agents under the HHS and DOT, however once again we question the availability of such facilities in rural communities both in Appalachia and the West where a number of mines are located. An examination of the State List of HHS Certified Laboratories indicates that no HHS Laboratories are located in major coal states such as West Virginia, Illinois or Kentucky. If specimens must be transported great distances to other states, there is an increased possibility of tainted specimens due to exposure to heat and conditions of transport. If drug and alcohol testing is to be conducted in the mining community, the rules must require that the laboratories doing the testing be at least as reliable. We further object to relying on DOT testing programs, especially when they could be changed for issues that may arise in the transportation industry as opposed to the mining industry.

66.301 Substances subject to mandatory testing.

This proposal lists substances for which testing will be conducted, which includes alcohol and ten drugs.

The UMWA offers no comment on this proposal.

66.302 Additional testing.

This proposal provides that the Secretary of Labor shall be permitted to designate additional substances for which mine operators must test.

The Union opposes the provision that would allow the Secretary complete discretion to add additional items to the list of prohibited substances. Rather any such designation shall be considered a rule-making and shall be governed by the same procedures that cover other rule-makings. We also object to the rule's failure to require any later-added substances to be referenced in any employer's written program. As written this section would violate due process. Before any changes are made to this list, the operator must meet with the Representative of the Miners to allow their input. Before an updated list is implemented all miners must be made aware of any changes through additional training sessions.

66.303 Circumstances under which testing will be required.

This proposal would follow DOT part 40 guidelines and require testing in the following circumstances: Pre-employment testing, random testing, post-accident testing, reasonable suspicion testing, and as a part of a return-to-duty and follow-up process for miners found to be in violation of the alcohol and drug prohibitions.

The Union points out that most of our members' employers already have drug-testing programs in place and have had them for many years. Our members have been tested under these circumstances, so this will be nothing new to the UMWA. Nevertheless, making this mandatory is offensive, especially since it will require limited Agency resources to be focused on a relatively insignificant issue.

66.304 Pre-employment testing

This proposal requires operators to require a pre-employment test before hiring new miners, or having them perform safety-sensitive jobs.

Once again, our members have been subjected to pre-employment alcohol and drug screening for many years, so this is nothing new to the UMWA.

66.305 Random testing.

This proposal would require random, unannounced testing on miners who perform safety-sensitive job duties.

UMWA miners who work at our larger employers have been subject to alcohol and drug testing since the 1980's. The UMWA has worked with mine management to resolve whatever issues regarding these programs we may have had disagreement about and most miners have been subject to alcohol and drug testing for twenty years or more. Random testing has always been a part of those programs.

"Random" should be defined in sufficient and better detail so that anyone in the industry can understand what it means and so that it does not come to mean "arbitrary." All personal on mine property are subject to random-testing.

66.306 Post-accident testing.

The proposed rule would require that post-accident tests be conducted of miners involved in the accident whenever an accident or occupational injury must be reported to MSHA. MSHA also proposes to require toxicology tests of the fatal victims.

The Union is not generally opposed to post-accident testing of surviving miners if/when that maybe warranted, however we feel it is not ethical to test deceased miners. The UMWA questions whether the Agency has authority to do such invasive tests without the victim's family's consent. To propose such a thing is an unethical and immoral intrusion at the family's time of grief. The Union would oppose testing of the deceased and questions MSHA's legal authority to do so without the family's authorization.

Furthermore, if miners "involved in the accident" will be tested, then those tested should include anyone whose actions could have contributed to the accident, which could include the maintenance supervisor who put a vehicle into service without adequately checking it for safety features, and anybody who altered ventilation to allow gas to accumulate, and/ anybody who conducted training that failed to cover all relevant hazards, and the section boss who did not check roof bolting, etc. We do not assume, as this rule does, that accidents are caused by miner's behavior and only by miner's behavior. We believe the proposed rule contains a conflict of interest insofar as mine operators are primarily responsible for determining who will be tested in the post-accident setting. There must be a means by which high-level supervisory personnel will also be tested. We support the requirement that all testing be at the Employer's expense.

66.307 Reasonable suspicion testing.

Under this proposal reasonable suspicion testing is conducted when a supervisor documents observable signs and symptoms that lead him or her to suspect alcohol or drug use.

In MSHA's commentary, it points out that most agreed that reasonable suspicion testing was a useful tool, however several who commented expressed their reservations about whether supervisors, even with considerable training, can readily identify when someone is impaired by drugs. The Union would echo that sentiment. As pointed out in comments on 66.203, supervisors are required to receive a total of two hours of training and one hour refresher annually. Two hours of training would not qualify anyone to identify the signs of someone impaired by drugs. Further as the Union pointed out before, using the section foreman to initiate reasonable suspicion testing would open the door to abuse of this privilege. Whenever there is a dispute on the working section, those in disagreement could easily become targets for such testing because of a grudge. The person charged with this responsibility must be independent and well trained to recognize the signs of drug use. The foreman may suggest to the person in charge that he suspects a miner may be impaired. However, the decision as to what action taken, and whether any miners should be tested for "reasonable suspicion" should not be left to the section foreman. We suggest that a minimum of two persons be required to confirm objective bases for any testing under this section.

See our comments above concerning the definition of reasonable suspicion. Anybody that works in a mine can have problems with drugs or alcohol and this includes

supervisors as well as miners. Therefore, anybody should be able to suggest testing for reasonable suspicion and that opinion should be reviewed by some other person, specifically, another supervisor.

66.400 Consequences to miner or supervisor for failing an alcohol-or drug-test or refusal to test.

This proposal would require the mine operator remove a miner or supervisor with a positive alcohol or drug test from safety-sensitive job duties. The miner could not be terminated for the first offense and would be provided job security while the miner seeks appropriate evaluation and treatment. For subsequent violations, it would be up to the mine operator to specify appropriate disciplinary steps, up to and including termination.

The Union believes that those who have alcohol or drug additions should be given ample opportunity to rehabilitate themselves. Subjecting that person to possible termination after the first offense would not provide such an opportunity. We also recognize that there may be those who are beyond rehabilitation and offering those people multiple chances to recover would not work. However, the rules must provide compassion for those who are struggling with addiction, but trying to recover. Twenty chances would be too extreme, but one chance would be the extreme of the opposite. A compromise must be struck somewhere in the middle. If a recovering addict falls off the wagon just once after his first offense, he could be subject to termination under this proposal. The loss of employment to a person in such a vulnerable state would be devastating and they likely would take a downward turn back to the addiction to deal with such a life challenge. Addicts most often struggle all of their life with their addiction, even after they have recovered. Ask any person associated with rehabilitation programs such as Alcoholics Anonymous and they will tell you that a recovering addict continues to struggle with their addiction even after they are clean and often do fall off the wagon. If a person is honestly trying to recover, has asked for the opportunity to continue treatment and is showing an honest effort to reform themselves, this effort must be acknowledged and encouraged, not punished. This is no way to make policy. It reveals a peculiarly American fetish for reductionist technical solutions – quick fixes – to complex social (and medical) problems. For the person dependent on drugs, the slogan, “just say no” has about as much positive effect as telling a person who is clinically depressed to “just cheer up.” Drug and alcohol addiction is a much more complicated social and medical issue that should be dealt with compassionately. Moreover, the ADA requires certain accommodations for covered persons.

Consequently, the Union urges the Agency to develop a rule that provides guidance in dealing with an addicted person beyond the first offense and provide job protection while they are recovering. Providing a rule to govern the actions taken past the first offense also puts everyone on a level playing field in dealing with addicted employees. However, one offense and your fired is too harsh. Even the “Three Strikes and Your Out” law passed under President Clinton proposed three offenses for those who commit violent crimes repeatedly before they were dealt serious punishment. A

person with an addiction problem should be provided at least as much consideration as a violent criminal. Therefore, the Union urges the Agency to reconsider the rule to provide additional measures for addicts to rehabilitate themselves.

As the Agency points out, rehabilitated miners are often an improvement to safety and provide a positive role model to others. A rehabilitated miner also assists the mine operator in retaining valuable employees. There is a benefit to all when these miners are provided the support and encouragement they need to rehabilitate themselves while maintaining employment and a productive life.

66.401 Operator actions pending receipt of test results

This proposal would require that a miner or supervisor be removed from a safety-sensitive job while awaiting the outcome of an alcohol or drug test when performed for "reasonable suspicion" or their role in an accident. The proposal would require that no action adversely affecting the miner's or supervisor's pay and benefits be taken while in wait of pending test results.

The Union would support this proposal. If a person is suspected of alcohol or drug abuse, they should be placed out of harm's way to themselves and others. Placing them in alternate work is the best solution while test results are pending for cause-related testing. The Union would agree that the miner's pay and benefits must be protected.

66.402 Substantiating legitimate use of otherwise prohibited substances.

This proposal provides the miner with an opportunity to demonstrate that the use of prohibited substances has been authorized by a physician. It further specifies that the possession of a valid prescription alone is not sufficient proof of legitimate use. Under this proposal, the MRO may conduct a medical interview with the miner, review his/her medical history up to and including contacting the miner's physician.

The Union would question the authority of the MRO to consult with anyone's physician. HIPPA regulations may conflict with this proposal. The Union asks for more information about how this proposal will protect miners' bonafide interest in maximizing the privacy of their medical records.. The proposal indicates that even when the miner has provided proof of a valid prescription, the MRO can still determine that the prescription is not being taken as directed or that unauthorized use has occurred. The miner's primary physician's assurance that the medication has been prescribed, is being used as prescribed and will not interfere with the miner's job performance is all the assurance one should need. The MRO is being put in the position of making a judgment as to whether the miner is under proper care by their physician and should not have that authority. For this reason, the Union would oppose any attempt by an MRO to challenge a miner's prescribed treatment by a physician. If the MRO is to consult with the miner's

physician, he should do so only with the miner's written permission. Failure of the miner to grant this permission shall not constitute a breach of this rule.

66.403 Operator actions after receiving verified test results.

This section specifies the actions mine operators must take upon receiving a positive alcohol or drug-test result. The miner must be immediately removed from performance of safety-sensitive job duties and referred to a substance abuse professional.

As the Union has pointed out throughout its comments, we agree that anyone found to be under the influence of alcohol or drugs must be removed from a job that could put themselves or others in danger. However, this proposal does not protect the miner from retaliation for subsequent offenses. As we have repeated throughout our comments, we believe that alcohol and drug addiction is a serious illness and must be treated as such. A recovering addict must be provided patience and time in overcoming an addiction. Recovery does not happen overnight as this rule suggests. The miner must be provided enough assistance and encouragement to insure they have sufficiently overcome their addiction before being placed in a safety-sensitive job, but they should be permitted to continue to work, out of harms way in other job duties until they are reformed, clean and ready to come back to their former job. This provides the miner an opportunity to maintain some self respect and his/her dignity while on the road to recovery. An experienced miner is a valuable asset to the mining community and the operator. He/She should be provided a compassionate means of dealing with a complicated social problem.

Section 66. 404 Evaluation and referral

The proposed rule would require the operators to offer job security to those miners who are first-time offenders provided they follow the SAP treatment recommendations and required return-to-duty procedures. For subsequent offenses, mine operators would have the discretion to specify disciplinary consequences, up to and including termination.

The Union would reiterate its comments on section 66.400 here. Furthermore, allowing the mine operator complete discretion as to what actions are taken if a second offense is detected leaves the door wide open for abuse. The industry is currently experiencing its latest "coal boom." The coal industry was depressed for nearly thirty years starting around 1980 until now. During that time, operators did not hire many young miners and the workforce they had was aging. Most of those experienced, aging miners are now ready for retirement, leaving the industry to compete for what experienced miners are out there looking for work. Most of those who are experienced manage to gain employment with the larger coal operators, where there is more job security. What miners are left, go to work for small operators who struggle to maintain an adequate workforce to operate their mine. If those small operators are left with the

choice of whether they have enough employees on hand to operate their mine, or if a miner is found to be a second offender what do you think the operator will do? Do you think they would choose not to operate the mine for a while until the offending miner is rehabilitated or they find a replacement for him? We think not. When such a situation is presented, that operator is going to choose to produce coal regardless of the circumstances. Consequently, this standard will not be enforced the same at all operations if such decision-making is left to the mine operator. To the extent the purpose of this rule is to insure working miners are not impaired, then the rule must require uniform treatment. Otherwise, there will be unequal application of this rule. Everyone must be required to play by the same rules on all levels. Also, we are concerned about whether appropriate and affordable programs are available for miners needing help. The proposed rule does not require an employer to pay for an SAP or other treatment; we suggest this be changed so miners will be more likely to get help when needed.

66.405 Return-to-duty process

This proposal of the rule specifies that prior to returning to performing safety-sensitive job duties, miners must follow the treatment recommendations of the SAP, be re-evaluated by the SAP, and comply with the testing requirements established by the SAP. The proposed rule points out that although the SAP verifies compliance with the recommended treatment, it is the mine operator who decides whether the miner will return to work performing safety-sensitive job duties.

Once again the rule leaves the door wide open for abuse. The decision as to whether a person returns to "safety-sensitive" job duties must not be left to the mine operator. As pointed out in our comments on 66.404, if a small operator is faced with making a decision that could determine whether his mine operates for the day or not, he is likely going to opt to produce coal. The rule must require the returning miner be placed in alternate work until he has been given adequate time to prove that he/she has successfully completed the recommended treatment; has passed the return-to-work tests and is well on the road to recovery. If an addict is going to "fall off the wagon" it is going to most likely be in the short term after completing the program. The proposed rule subjects the rehabilitated miner to unannounced tests in the first 12-months following his return to work and continuing for a maximum of 24 months. If an addict is going to return to using prohibited substances, that 24 months should be used as a trial period to make sure the miner remains alcohol /drug free. Should the miner test positive during their 24- month recovery period, he should be placed back into rehab and provided alternative work. The rehabilitation of a person addicted to alcohol or drugs does not occur overnight. This rule treats a serious illness as one that can be cured overnight. The addicted miner must be provided sufficient time to recover. Any ADA accommodations must be factored in, too.

66.406 Return-to-duty and follow-up testing.

Return -to-duty testing is a one-time announced test that is required when a miner who tested positive in the past has completed required treatment and is ready to return to a position that involves performing safety-sensitive job duties. Follow-up testing is conducted with a minimum of six unannounced tests in the first 12 months following return to work and continuing for a maximum of 24 months.

As the Union pointed out in comments on 66.405, we feel that 12-24 month follow-up period should be used as a "recovery period" for the miner to make sure he/she has overcome their addiction. During the 12 – 24 months the miner should not be placed in a "safety-sensitive" position. They should be provided alternative work and tested during that period to make sure they are well on the road to recovery.

66.500 Recordkeeping requirements.

This proposal specifies that records of alcohol and drug-test would be protected as confidential communication between the mine operator and the miner. The proposal also prohibits sharing such records with others and requires secure storage so the records cannot be accessed by unauthorized individuals.

The Union would agree with this proposal in spirit. However, the proposal fails to provide adequate safeguards. It is important that the miner's privacy be protected. Greater specificity is required. The rule should specifically limit who can have access to records and the operator should face sanction if the miners' confidentiality is breached.

MSHA states in the preamble to this proposed rule the following commitment to developing an understanding of the extent of drug and alcohol use among miners:

"MSHA, the mining industry, and individual mine operators can all benefit from establishing an accurate quantifiable baseline of alcohol and drug problems, and tracking trends over time that result from the proposed rule. Consequently, the proposed rule would require mine operators to keep records on the number of miners in safety-sensitive job positions that are covered by the rule and results from the various types of tests performed. . . Under the proposal, MSHA would be able to analyze the information, which would add to an understanding of the extent of alcohol and drug abuse among miners and to what degree such use contributes to accidents and injuries." p 52151

We agree that it is important to gain an accurate understanding of the extent of drug and alcohol use among miners. But we raise two concerns. First, many mine operators have substance abuse programs in place now that are very similar to the program in this proposed rule – pre-employment testing, post accident testing, random testing, testing on suspicion, and return to work testing. Many programs have been in place for decades. Doubtless, miner operators already have an abundance of data on such problems and the

extent to which they are associated with accidents and injuries. MSHA is not the first to address this problem. Did MSHA request this information from mine operators prior to drafting this proposed rule. Did MSHA take advantage of these data “ . . . to analyze the information, which would add to an understanding of the extent of alcohol and drug abuse among miners and to what degree such use contributes to accidents and injuries.”? It appears not only that they did not but that they do not recognize this shortcoming as a significant weakness in this proposed rule.

Our second concern is this: MSHA states that information acquired according to this rule would be valuable and made available to MSHA and to “the industry.” The industry includes, or should include, the unions that represent miners. If the unions are to fulfill their responsibilities of fairly representing miners for purposes of collective bargaining and for other purposes, it is essential that the union be well informed and, in particular, should be able to obtain the same information as is made available to MSHA and to “the industry.” Confidentiality, as stated, of these records is essential. Therefore, for these records to be made available to the industry, including unions, the names and any other information that would identify individual miners should be purged prior to their being made available to anybody – MSHA or the industry or unions. If a list with names is made available to “the industry,” it could easily become a black list for denying employment to miners.

Additional Concerns

*Both as a matter of policy and as a matter of law, the UMWA suggests the proposed rule is ill-advised and should be withdrawn. Insofar as the U.S. Supreme Court has determined that mandatory drug testing programs that require private sector employers to test their employees for drugs implicate the Fourth Amendment protection against illegal “searches,” Skinner v. Railway Labor Executives Assoc., 489 U.S. 602, 617 (1989), the UMWA contends this proposed rule, on its face, is unconstitutional. While some drug testing programs have been deemed lawful, that is only when the particular testing programs were reasonable and justified by “compelling governmental interests in public safety or national security,” *Id.* at 620. Here, the Agency has not suggested there exists, much less provided, any objective evidence of a compelling government interest to support drug testing of miners who work for private industry employers operating on private property. Likewise, MSHA has not shown that impaired coal miners in any way jeopardize the public safety. Instead, it simply suggests that drug/alcohol problems in the mining industry reflect what is happening in society, generally. 73 FR 52139.*

Even the experience with high-profile accidents is markedly different between the mining industry and the transportation industry (the latter for which testing has been upheld.) Congress mandated drug testing in the transportation industry after the conduct of impaired employees was found to have caused multiple high-fatal accidents. In stark contrast, the only high-profile accidents in the mining industry resulted from operator misconduct and a lax Agency, not impaired employees. As recently as its 2006

legislation, the MINER Act, Congress considered, but decided against adding drug/alcohol testing requirements.

Even if MSHA could show some compelling government interest, such testing still would be balanced against the miners' reasonable expectation of privacy before it could satisfy a Fourth Amendment challenge. See, Harmon v. Thornburgh, 878 F.2d 484, 488 (D.C. Cir. 1989). In any event, this proposed testing program fails the Constitutional standard. The Agency relies on anecdotal reports (as opposed to objective evidence) of improper drug usage, and fails to establish there is any immediate and direct threat to public safety against which the rule would protect. United Teachers of New Orleans v. Orleans Parish School Board, 142 F. 3d 853 (5th Cir. 1998).

Further, the proposed rule is too broad. It intrudes on miners' rights and expectations of privacy. Never before has the government used the bodies of miners as part of its enforcement scheme. The proposed rule also is inconsistent with many collectively bargained programs that are already in place at coal mines. MSHA has offered no evidence that the existing programs do not work well or leave miners at risk. The proposed rule is also too broad insofar as it covers too many miners, instead of only any whose jobs have a direct and immediate relationship to public safety. The Supreme Court's decision in National Treasury Employees Union v. Von Raab, 489 U.S. 656 (1989) suggests that there must be a "clear, direct nexus . . . between the nature of the employee's duty and the nature of the feared violation" for random drug testing to pass constitutional muster. See, Harmon v. Thornburgh, 878 F.2d at 490. MSHA does not claim that all miners pose a threat to public safety though all who are subject to Part 46 and 48 training would be covered by these testing programs. MSHA must identify which job functions it contends pose a direct threat to public safety, and we must have a chance to comment, before MSHA could advance such a rule. It is improper to rely on the training provisions (which serve a different purpose) to determine which miners hold jobs that arguably could threaten public safety. The proposed rule is also too broad insofar as it requires many kinds of testing. At a minimum, the random testing provisions on virtually all mine employees should be struck as too broad. Transportation Institute v. U.S. Coast Guard, 727 F. Supp. 648 (D.C. D.C. 1989). And failing to limit post-accident testing to those reasonably deemed to be at fault is overbroad. United Teachers of New Orleans v. Orleans Parish School Board, 142 F. 3d 853, 857 (5th Cir. 1998).

MSHA has previously refused to regulate hazards to miners without a substantial body of scientific evidence demonstrating that existing conditions in mines pose a risk to their health. MSHA has stated that it will not regulate unless it can show a significant risk from exposure in mines. The level of scientific information MSHA requires before regulating known toxic hazards to workers is rigorous. Yet, this record contains nothing objective to suggest that the mining industry has any more, or a different kind, of problem with impairment than any other industry; certainly the kind of evidence that MSHA requires for the health hazards we have separately urged it to regulate is absent from this proposed rule. The showing required by MSHA to establish a "compelling governmental need" under the Fourth Amendment must be at least as rigorous as that required by Section 101 of the Mine Act. MSHA has made no

effort to demonstrate a scientifically valid basis for believing that miner impairment is a widespread safety issue in mines.

The proposed post-accident testing program is also unconstitutional because it does not require a reasonable basis to believe the employee to be tested was impaired, or that his conduct may have contributed to the accident, or that the employee otherwise violated the proposed regulation. For such a search without a warrant, more is required to pass Constitutional scrutiny. Moreover, the proposed rule is too broad insofar as it would require testing for every incident involving a reportable injury or illness, not just those that involve a threat to public safety. Because protecting public safety is the only way MSHA can claim a compelling need for a drug testing program, there must be some connection to either that compelling need or a reasonable basis for believing that a miner violated MSHA rules before post-accident testing can occur. Being in the wrong place at the wrong time should not be enough to subject a miner to such testing, especially in the private sector. Finally, not only it would be morally wrong, but there is no basis offered for post-mortem testing of deceased miners – irrespective of whether the family might object, or if testing might conflict with the deceased miner's religious beliefs - unless MSHA would have reasonable grounds to believe that the miner's impairment was related to a violation of Mine Act rules.

MSHA's proposal for treatment is also offensive. First, a single, positive drug test may not reveal a miner has a disease warranting treatment. Second, even if a miner does have a substance abuse problem, that problem likely results from conditions outside the mine and, therefore, is outside MSHA's regulatory jurisdiction. MSHA's only interest is in ensuring that miners are not impaired while performing safety-sensitive mine duties. Further, there is no basis for mandating treatment for substance abuse when neither MSHA nor OSHA mandate treatment for any other work-related health effect. Miners with excessive exposure to coal dust who are at risk of fatal illness get medical surveillance, but are not required to seek treatment. There is no reason to think that a positive drug test places a miner at greater risk of disabling illness than does exposure to coal dust or other toxins. Further, treatment for a positive drug test may conflict with miner privacy and religious freedom. Mandating treatment reaches far beyond any legitimate interest MSHA may have in drug-free/alcohol-free mines.

Second, there is no evidence that recommended treatment will be effective in improving health and safety at mines. In all prior standards, MSHA has demonstrated that its proposed method of compliance will be effective in meeting health and safety goals. For example, MSHA could not require mine operators to purchase and install equipment that is ineffective at reducing the risk posed by a regulated hazard. Likewise, MSHA may not mandate treatment methods for which there is no evidence of effectiveness. Here, MSHA has made no showing that the required compliance will meet its stated health and safety goals. MSHA must also demonstrate that mandatory treatment is economically feasible. Further, the proposed rule contains no requirement that the SAP recommend appropriate treatment or that miners have an opportunity to question whether another treatment would be equally as good. The rule inappropriately allows the mine operator to select the SAP to whom a miner will be referred and then prohibits any

other health care professional from questioning the SAP's recommended treatment. It is improper to prohibit a miner's physician from opining that treatment is not necessary or that another type of treatment is equally or more appropriate.

MSHA should also ensure that an SAP does not have any proprietary or other interest in the treatment programs the SAP recommends. For example, it would be improper for MSHA to prohibit the second-guessing of a recommendation made by the only SAP in town when a miner must attend that SAP's expensive rehabilitation program before he could return to work. Miners also must be able to obtain treatment consistent with their religious beliefs, and not be forced to attend a program that would be incompatible with their beliefs. Miners should be able to select treatment options consistent with their health insurance coverage, if any.

Nothing in the Act mandates treatment of medical conditions. The Act requires that miners who are removed from exposure to mine-related hazards should suffer no loss of pay as a result. This proposed rule is incompatible with these provisions, especially with regard to miners who are prescribed pain medication to treat a work-related injury and are then removed from work because the medication made necessary by their work-related injury effectively removes them from work.

The Administrative Procedure Act requires MSHA publicly to disclose any significant data or analysis on which its proposed rule is based so that interested parties may comment on that data. See Portland Cement Ass'n v. Ruckelshaus, 486 F.2d 375 (D.C. Cir. 1973). MSHA's failure to do so is grounds for invalidating any rule it may promulgate. Here, we have been unable to obtain data on which MSHA relied to support this proposed rule.

Although MSHA claims it is partly relying on existing DOT regulations, it fails to identify upon which of the lengthy regulations it plans to rely; without such a designation, it is impossible to comment about how those rules may/not pertain to the coal mine industry. By failing to identify exactly which provisions it plans to include in its own rule, MSHA has deprived us of the chance to fully comment. We are entitled to more specificity before we can complete our comments on this matter. Moreover, if the DOT regulations would change, there would be no opportunity for this regulated community to influence those changes; it is impossible to comment now about how any such adjustments might affect the mining industry, yet it would be immediately impacted.

This proposed rule contains numerous problems. Now this rulemaking process, and later any related enforcement expenditures, represent a waste of valuable Agency resources. We suggest this effort be scrapped in favor of far more compelling health and safety hazards.

Alpha Engineering Services, Inc.

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July 13, 2009

Mr. Ron Wooten, Director
WV Office of Miners' Health Safety and Training
1615 Washington St. East
Charleston WV 25311.

RCVD JUL 15 2009

Re: Comments: Title 56 Series 3: Rules and Regulations Governing the Safety of Those Employed in and Around Surface Mines in West Virginia

Dear Director Wooten:

Our firm and it's personnel have extensive experience with coal mine permitting, operations and safety in West Virginia. While most of our work is focused on underground mining, we also have experience with surface mining, augering and highwall mining. We have reviewed these proposed Amendments to the surface Mine Legislative Rules. In accordance with the Notice for Public Hearing on Proposed Amendments to Surface Mine Legislative Rules found in Title 56, Series 3 of the WV Code of State Rules, attached are comments on these rules.

In addition, I wish to emphasize three particular points.

First, the definitions and terms used in the proposed regulations are lacking specificity and clarity. They are open to wide interpretation and abuse by the overly zealous enforcer.

Second, the inclusion of Manufacturer's Specifications BY REFERENCE in the regulations is not a good idea and is likely illegal.

- ⇒ Almost all manufacturers unreasonably limit the scope of use of their equipment or material in the specifications and instructions so as to limit their own liability during civil litigation. The overly zealous mine inspector can make these manufacturer's instructions into a treasure trove of citation and order material with no improvement in mine safety. The record keeping component of this requirement alone – keeping, filing, producing, training – is not practical in the least. Taken to it's logical conclusion, every piece of equipment and material would have to be

accompanied by it's manufacturer's instruction manual for it's entire life in the field.

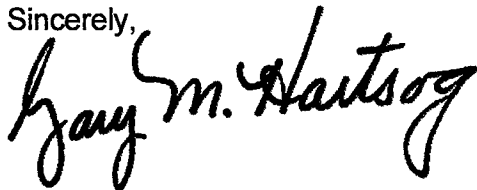
- ⇒ Incorporation by reference of publications of entities such as the Underwriter's Laboratories or the National Fire Protection Association are typical in regulations. These are neutrally derived, non-profit organizations. However, the incorporation of manufacturer's instruction manuals and specifications without specific due notice of each is likely illegal.

Third, the mapping requirements for surface and augering/ highwall-mining found in these amendments appear to be a restatement of the MSHA regulations found in Part 77 of the Code of Federal Regulations. In the interest of future generations and the safety of miners and others today, I suggest a rethinking of these requirements in light of these concepts:

- ⇒ Make the maps produced of these mining operations such that they become a record of what future generations may find if they ever go back to these areas. It's painfully obvious that previous generations of mine mapping were not adequate to the requirements of today's world. We need to think in terms of not only today's requirements but what may be required in the future.
- ⇒ The Surface Mine today is a dynamic environment that changes all the time. The surface mine map should be a safety center not unlike the underground mine map with temporary notations and locations of all activities and infrastructure that can and does impact safe operation of the mine.
- ⇒ The mapping requirements must be reasonable and attainable by the professional who is required to certify the map.

Please consider review and revision of these points and those outlined in the attached document.

Sincerely,

A handwritten signature in black ink that reads "Gary M. Hartsog". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Gary M. Hartsog, PE & PS(SU),
President
Alpha Engineering Services, Inc.

**TITLE 56
LEGISLATIVE RULES
OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING**

**SERIES 3
RULES AND REGULATIONS GOVERNING THE SAFETY OF
THOSE EMPLOYED IN AND AROUND SURFACE MINES IN WEST VIRGINIA**

NOTE: These proposed regulations need to be reviewed and rewritten. There are inconsistencies and many undefined terms. Many of the requirements are open to wide interpretation on the part of all concerned with them This makes strict compliance nearly impossible. There are some good and necessary provisions included here, but suggest these regulations be re-thought and re-written.

NOTE: There are several references to the manufacturer's specifications and manuals. The manufacturer's specifications and manuals are put together to limit the manufacturer's liability and should not be codified as law.

§56-3-1. General.

1.1. Scope. --These rules govern safety of employees in and around mines.

1.2. Authority. --W. Va. Code § ~~22-6-4~~ 22A-1-6 and 22A-1-38

1.3. Filing Date. --June 2, 2009

1.4. Effective Date. --_____

1.5. Applicability. --These regulations shall extend to all surface mining operations. These regulations shall not apply to any utility or railroad having facilities in the vicinity of surface mining operations unless such utility or railroad is also the operators of such surface mining operations.

1.6. Other law applicable. --All provisions of the mining law of this state, specifically Chapter 22A, Articles ~~2~~ 1 and 2 of the West Virginia Code, are applicable to surface mining, except to the extent that these regulations cover the specific requirement, and except to the extent that the context of a specific provision would render its applicability totally inappropriate to surface mining.

§56-3-2. Effect of Law and Regulations.

2.1. These regulations shall have the effect of law and violations shall be deemed a violation of law and so cited with the same effect as law. All provisions of Article 1, Chapter 22A of the West Virginia Code ~~relative to enforcement~~ are applicable to ~~the enforcement~~ of these regulations.

§56-3-3. Definitions.

3.1. "Surface Mine" shall mean all areas surface mined or being surface mined as well as adjacent areas ancillary to the operations, together with preparation and processing plants; storage areas and haulageways, roads, shops and trails; ~~which are covered by the provisions of Chapter 20, Article 6 of the Code and coal prospecting subject to Section 8, Article 6, Chapter 20 of the Code.~~ "Surface Mine" for the purpose of these regulations shall not mean the surface operations connected with an underground coal mine.

3.2. Department: The term "Department" shall mean the state ~~department of energy~~ Office of Miners' Health, Safety and Training provided for in Section 2 1, Article 1 of Chapter 22A of the West Virginia Code.

3.3. Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training: The term "Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training" shall mean the Director of the ~~department of energy~~ office of miners' health, safety and training provided for in Chapter 22A, Article 1, Section 3, of the West Virginia Code, ~~and is synonymous with the term "Chief of the Department of Energy".~~

3.4. The term "Inspector" shall mean surface mine inspector employed by the ~~Department of Energy~~ Office of Miners' Health, Safety and Training.

3.5. Mine Inspectors' Examining Board: The term "Mine Inspectors' Examining Board" shall mean the mine inspectors' examining board provided for in ~~Section 12~~ Article 9 of Chapter 22A of the West Virginia Code.

3.6. Board of Appeals. --The term "Board of Appeals" shall mean the Board of Appeals as provided for in ~~Section 34~~ Article 5 of Chapter 22A of the West Virginia Code.

3.7. Agent. --the term "Agent" means any person charged with the responsibility for the operations of all or a part of a surface mine or the supervision of the miners on a surface mine.

3.8. Operator. --The term "Operator" shall mean any firm, corporation, partnership or individual operating any surface coal mine or part thereof, or engaged in the construction of any facility associated with a coal mine.

3.9. Surface Miner. --the term "Surface Miner" shall mean any individual working on ~~or around~~ a surface mine. ~~who is employed by the operator.~~

3.10. Person. --The term "Person" shall mean any individual, partnership, association, corporation, firm, subsidiary of a corporation or other organization.

3.11. Superintendent. --The term "Superintendent" shall mean the person who shall have, on behalf of the operator, immediate supervision of one (1) or more mines.

3.12. Mine Foreman. --The term "Mine Foreman" shall mean the certified person whom the operator or superintendent shall place in charge of the workings of the surface mine and of the persons employed thereon.

3.13. Assistant Mine Foreman. --The term "Assistant Mine Foreman" shall mean a certified person

designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of the persons employed therein.

3.14. Supervisor. --The term "Supervisor" shall mean a superintendent, mine foreman, assistant mine foreman, or any person specifically designated by the superintendent or mine foreman to supervise work of employees and who is acting pursuant to such specific designation and instructions.

3.15. Interested Persons. --The term "Interested Persons" shall include the operator, members of any mine safety committee at the mine affected and other duly authorized representative of the mine workers and Department of Energy the Office of Miners' Health, Safety and Training.

3.16. Certified Electrician. --The term "Certified Electrician" shall mean any person who is qualified as a mine electrician and who has passed an examination given by the Department of Energy Office of Miners' Health, Safety and Training, or has at least three (3) years of experience in performing electrical work underground in a coal mine, in the surface work area of an underground coal mine, in a surface coal mine, in a noncoal mine, in the mine equipment manufacturing industry, or in any other industry using or manufacturing similar equipment, and has satisfactorily completed a coal mine electrical training program approved by the Department of Energy Office of Miners' health, Safety and Training.

3.17. Certified Person. --The term "Certified Person" when used to designate the kind of person to whom the performance of a duty in connection with the operation of a mine shall be assigned, shall mean a person who is qualified under the provisions of this law to perform such duty.

3.18. Accident. --The term "Accident" shall mean any premature ignition, fire or injury, or death other than natural causes of any person.

3.19. Imminent Danger. --The term "Imminent Danger" means the existence of any condition or practice on a surface mine which could be expected to cause death or serious physical harm before such condition or practice can be abated.

3.20. Qualified Person. --The term "Qualified Person" shall mean a person who has completed an examination and is considered qualified on record by the Department of Energy Office of Miners' Health, Safety and Training.

3.21. Approved. --The term "Approved" shall mean in strict compliance with mining law, or, in the absence of law, accepted by a recognized body or organization whose approval is generally recognized as authoritative on the subject.

3.22. Berm. --Means a pile or mound of material or equivalent capable of restraining a vehicle.

3.23. Work of Preparing the Coal. --The term "Work of Preparing Coal" shall mean the breaking, crushing, sizing, cleaning, washing, drying, mixing, storing, loading, and removing of over-burden from the top of the coal for the purpose of extracting coal.

3.24. Active Underground Mine Working. --The term "Active Underground Mine Working" shall mean all places in a mine that are ventilated and inspected regularly.

3.25. Abandoned Underground Mine Workings. --The term "Abandoned Underground Mine Workings" shall mean excavation, either caved or sealed, that is deserted and in which further mining is not intended, or open workings which are ventilated and not inspected regularly.

3.26. Working Place. --The term "Working Place" shall mean all areas in or about a surface mine where persons are working.

3.27. Detonator. --The term "Detonator" shall mean blasting caps, electrical blasting caps, and nonelectric delay blasting caps.

3.28. Nonelectric delay blasting caps. --The term "Nonelectric Delay Blasting Caps" shall mean a blasting cap with an integral delay element in conjunction with and capable of being detonated by a detonation impulse or signal from a miniaturized detonating cord and does not require the use of electric energy to function.

3.29. Primer. --The term "Primer" shall mean a cartridge or container of explosives into which a detonator or detonating cord is inserted or attached, and whose purpose is to initiate the main explosive charge.

3.30. Detonating cord. --The term "Detonating Cord" shall mean a flexible cord containing a center core of high explosives to detonate other explosives with which it comes in contact.

3.31. Cast primer or booster. --The term "Cast Primer or Booster" shall mean a case or pressed block or solid high explosives (i.e., not nitroglycerin sensitized) which is normally used to detonate insensitive or noncapsensitive explosives.

3.32. Safety fuse. --The term "Safety Fuse" shall mean a flexible cord containing an internal burning medium by which fire or flame is conveyed at a continuous and uniform rate from the point of ignition to the point of use, usually a blasting cap.

3.33. Detonating cord millisecond delay connectors. --The term "Detonating Cord Millisecond Delay Connectors" shall mean nonelectric shot interval (millisecond) delay devices for use in delaying blasts which are surface initiated by detonating cord.

3.34. Blasting agent. --~~Means any material consisting of a mixture of a fuel and oxidizer which:~~ An explosive material which meets prescribed criteria for insensitivity to initiation.

(a) is used or intended for use in blasting; For storage, Title 27, Code of Federal Regulations, Section 55.11 defines a blasting agent as any material or mixture, consisting of fuel and oxidizer intended for blasting, not otherwise defined as an explosive: provided, that the finished product, as mixed for use or shipment, cannot be detonated by means of a No. 8 test blasting cap (detonator) when unconfined (ATF Regulation).

(b) is not classified as an explosive by the Department of Transportation; For transportation, Title 49 CFR, Section 173.50, defines Class 1, Division 1.5 (blasting agent) as a substance which has mass explosion hazard but is so insensitive that there is very little probability of initiation or of transition from burning to detonation under normal conditions in transport.

(c) passes all United States DOT tests defining blasting agent, including insensitivity to a No. 8 blasting cap in accordance with CFR49, 173.114a.

3.35. Blasting area. --Shall mean the area near blasting operations in which concussion or flying material can reasonably be expected to cause injury.

3.36. Explosives. --The term "Explosives" shall mean any or all of the following, but is not limited

to: water gel slurries, dynamites, permissibles, pellet powder, blasting caps, electric blasting caps, nonelectrical delay blasting caps, electronic computer chip blasting caps, cast primer and boosters, detonating cord, and detonating cord delay connections.

3.37. Electric blasting caps. --The term "Electric Blasting Caps" shall mean instantaneous electric blasting caps and all types of delay electric blasting caps.

3.38. Armored cable. --The term "Armored Cable" shall mean a cable provided with a wrapping of metal, usually steel wires or tapes, primarily for the purpose of mechanical protection.

3.39. Branch circuit. --The term "Branch Circuit" shall mean any circuit, alternating current or direct current, connected to and leading from the main power lines.

3.40. Cable. --The term "Cable" shall mean a standard conductor (single conductor cable) or a combination of conductors insulated from one another (multiple conductor cable).

3.41. Circuit breaker. --The term "Circuit Breaker" shall mean a device for interrupting a circuit between separable contacts under normal or abnormal conditions.

3.42. Delta connected. --The term "Delta Connected" shall mean a power system in which the windings or transformers or S.C. generators are connected to form a triangular phase relationship, and with phase conductors connected to each point of the triangle.

3.43. Effectively grounded. --The term "Effectively Grounded" is an expression which means grounded through a grounding connection of sufficiently low impedance (inherent or intentionally added or both) so that fault grounds which may occur cannot build up voltages in excess of limits established for apparatus, circuits or systems so grounded.

3.44. Flame-resistant Cable, Portable. --The term "Flame-resistant Cable, Portable" shall mean a portable flame-resistant cable that has passed the flame test of the Federal ~~Bureau of Mines~~. Mine Safety and Health Administration.

3.45. Ground or grounding conductor (mining). --The term "ground or Grounding Conductor (mining)", also referred to as a safety ground conductor, safety ground, and frame ground, shall mean a metallic conductor used to connect the metal frame, or enclosure or any equipment, device or wiring system with a mine track or other effective grounding medium.

3.46. Grounded (earthed). --The term "grounded (earthed)" shall mean that the system, circuit, or apparatus referred to is provided with a ground.

3.47. High voltage. --The term "High Voltage" shall mean voltages of more than one thousand (1,000) volts.

3.48. Lightning Arrestor. --The term "lightning arrestor" shall mean a protective device for limiting surge voltage on equipment by discharging or by passing surge current, it prevents continued flow or follow current to ground and is capable of repeating these functions as specified.

3.49. Low voltage. --The term "low voltage" shall mean up to and including six hundred sixty (660) volts.

3.50. Medium voltage. --The term "medium voltage" shall mean voltages from six hundred sixty-one (661) to one thousand (1,000) volts.

3.51. Mine Power Center or Distribution Center. --The term "mine power center or distribution center" shall mean a combined transformer or distribution unit, complete within a metal enclosure from which one (1) or more low-voltage power circuits are taken.

3.52. Neutral (derived). --The term "neutral (derived)" shall mean a neutral point or connection established by the addition of a "zigzag" or grounding transformer to a normally underground power system.

3.53. Neutral Point. --The term "neutral point" shall mean the connection point of transformer or generator windings from which the voltage to ground is nominally zero (0), and is the point generally used for system groundings in wye-connected A.C. power system.

3.54. Portable (Trailing) Cable. --The term "portable (trailing) cable" shall mean a flexible cable or cord used for connecting mobile, portable or stationary equipment ~~in mines to a trolley system or other external to a~~ source of electrical energy where permanent mine wiring is prohibited or is impracticable.

3.55. Wye-Connected. --The term "wye-connected" shall mean a power system connection in which one (1) end of each phase windings or transformers or A.C. generators are connected together to form a neutral point, and a neutral conductor may or may not be connected to the neutral point, and the neutral point may or may not be grounded.

3.56. ZigZag Transformer (Grounding Transformer). --The term "zigzag transformer (grounding transformer)" shall mean a transformer intended primarily to provide a neutral point for grounding purposes.

3.57. Brake systems:

(a) Service brake system - the primary brake system used for stopping a vehicle.

(b) Emergency stopping system - the system used for stopping a vehicle in the event of any single failure in the service brake system.

(c) Parking system - a system to hold a stopped vehicle in a stationary position.

3.58. "Barricaded" means to obstruct passage of person, vehicles, or flying materials.

3.59. Blast controller. – The term "blast controller" shall mean a firing device for electronic detonator circuits which may have functions (such as programming, communication, circuit diagnostics, etc.) in addition to charging and transmission of the firing command.

3.60. Blast site. – The term "blast site" shall mean the area where explosive material is handled during loading of blast holes, including fifty (50) feet in all directions from the perimeter formed by loaded holes.

3.61. Blasting accessories. – The term "blasting accessories" shall mean non-explosive devices and materials used in blasting, such as, but not limited to, cap crimpers, tamping bags, blasting machines, blasting galvanometers, and cartridge punches.

3.62. Case insert. – The term “case insert” shall mean a set of printed, precautionary instructions, including the IME “Instructions and Warnings” which is included in a case of explosive materials.

3.63. Electrical Storm. – The term “electrical storm” shall mean an atmospheric disturbance characterized by intense electrical activity producing lightening strikes and strong electric and magnetic fields. Synonymous with a thunderstorm and a lightening storm.

3.64. Electronic detonator. – The term “electronic detonator” shall mean a detonator that utilizes stored electrical energy as a means of powering an electronic timing delay element/module and that provides initiation energy for firing the base charge.

3.65. Extraneous electricity. – The term “extraneous electricity” shall mean electrical energy, other than actual firing current or the test current from a blasting galvanometer, that is present at a blast site and that could enter an electric blasting circuit. It includes stray current, static electricity, RF (electromagnetic) waves and time varying electric and magnetic fields.

3.66. Firing/blasting device. – The term “firing device” or “blasting device” shall mean a device capable of charging and transmitting a fire command to an electronic detonator circuit. Also, a device capable of detonating an electric or nonelectric detonator.

3.67. Misfire - A blast or specific borehole that failed to detonate as planned. Also, the explosive materials that failed to detonate as planned.

3.68. Barrier – Material objects that separates, keeps apart or demarcates in a conspicuous manner such as cones, stakes and warning tape, used in conjunction with warning signs.

3.69. Borehole – A hole drilled in the material to be blasted, for the purpose of containing an explosive charge, also called Blasthole or Drillhole.

3.70. Downline – The line extending down the borehole used to carry energy to the detonating cap.

3.71. Emulsion – An explosive material containing substantial amounts of oxidizer dissolved in water droplets, surrounded by an immiscible fuel, or droplets of an immiscible fuel surrounded by water containing substantial amounts of oxidizer.

3.72. Firing/Lead line – The wires connecting electric or electronic blasting circuit(s) to the electrical power source/blast controller. In cases of non electrical initiation systems, the line that connects the blasting circuit(s) to the blasting initiating device.

3.73. Hot Holes – Boreholes drilled in the overburden overlaying a burning coal seam which increases the temperature of the boreholes.

3.74. Institute of Makers of Explosives (IME) – A non-profit safety-oriented trade association representing producers of commercial explosive materials in the United States and Canada and dedicated to safety in the manufacture, transportation, storage, handling and use of explosive materials.

3.75. Loaded Hole – A borehole containing explosive material(s).

3.76. Loading – Placing explosive material in a borehole or against material to be blasted.

3.77. Overburden – Material of any nature laying on top of a deposit of coal which is to be mined.

3.78. Radio Frequency Energy – The energy radiated as electromagnetic waves in the radio frequency spectrum.

3.79. Radio Frequency Transmitter – An electronic transmitting device which radiates radio frequency waves. The transmitting device may be fixed (stationary) or mobile, and includes car telephones, citizens band radios, AM and FM radio transmitters, television transmitters and radar transmitters.

3.80. Shot or Round – A group of loaded boreholes fired, or intended to be fired in a continuous sequence with the application of initiating energy.

3.81. Shock Tube – A small diameter plastic tube used for initiating detonators. It contains only a limited amount of reactive material so that the energy that is transmitted through the tube by means of a detonation wave is guided through and confined within the walls of the tube.

3.82. Slurry – An explosive material containing substantial portions of a liquid, oxidizers and fuel, plus a thickener.

3.83. Static Electricity – Electric charge at rest on a person or object. It is most often produced by the contact and separation of dissimilar insulating materials.

3.84. Stray Current – A flow of electricity outside an insulated conductor system.

3.85. Wet Holes – Boreholes that contain water.

3.86. Extreme slope - An extreme slope is any slope greater than a 2:1 slope.

3.87. Competent person - means a person designated by the mine operator or independent contractor who has a minimum of twenty-four (24) months experience at a surface mine and is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

3.88. Approved Detector – means any detector, approved by MSHA, to test for methane gas, oxygen deficiency, or other harmful gases.

XX

§56-3-27 10. Mine Foreman and Assistant Mine Foreman; Daily Inspection of Working Places; Records.

27 10.1. Pre shift examination.

(a) Prior to the beginning of any shift the mine foreman or assistant mine foreman shall visit and carefully examine ~~highwalls in the working area and spoil piles for cracks, loose materials, overhanging ledges, and other dangerous conditions~~ all active working places of the surface mine.

(b) Upon completion of the examination, the foreman shall record the results in a book prescribed by the director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training, at the designated station at the surface mine before persons enter the working area of the mine. Before the beginning of any shift upon which they shall perform supervisory duties, the mine foreman or his assistant shall review carefully and countersign all books and records of the prior shift reflecting the conditions and the areas under their supervision, exclusive of equipment logs, which the operator is required to keep.

NOTE: Problem here with reviewing and signing all books and records PRIOR to shift? Logistics problem.

(c) The operator shall have weekly safety meetings with all employees which shall provide training in the working practices and conditions at the mine and rules and regulations applicable thereto. A record of the topic of the weekly safety meetings shall be kept and signed by all people in attendance. This record shall be kept for one (1) year and made available to a representative of the Director upon request.

NOTE: Is there a problem here requiring the attendees to sign that they were in attendance? What if someone refuses to sign? Can they be found in violation? Disciplined by the company for violating the regulation?

(a) The mine foreman or assistant mine foreman shall examine all working places ~~in the pit at the surface mine~~ under his supervision for hazards at least once every four (4) hours during each working shift, or more often if necessary for safety. Upon completion of the examination(s) the foreman shall record the results and time(s) in a book prescribed by the Director. The mine foreman shall also, each day, read carefully and countersign with ink or indelible pencil all reports entered in the record book by the mine foreman or his assistants on the prior shift, and he shall supervise the foreman or his assistants.

NOTE: Can this be done from "the truck" or does the foreman have to return to a central location/ office to sign? Can the examination be called in by radio or phone like with a UG fireboss call-out? Logistics problem.

27 10.2. On-shift examination.

(b) It shall further be the duty of the mine foreman or the assistant mine foreman to carefully examine the haulage roads ~~in the pit area at the surface mine~~ for slips, cracks, overhanging trees and other dangerous conditions during his pre-shift and on-shift examinations.

27 10.3. Dangerous conditions. --Should the mine foreman or his assistants find a place to be in a dangerous condition, they shall not leave the place until it is made safe, or shall remove the persons working therein until the place is made safe by some competent person designated for that purpose.

He shall also record any dangerous conditions and practices found during his examination in a book provided for that purpose.

27 10.4. Close deep operations. --When a surface mine operations is known to be close to an active underground mine, the mine foreman or superintendent shall give the official representative of the

underground mine at least twelve (12) hours notice in advance of any contemplated blasting that may endanger the safety of persons employed in the underground mine.

27 10.5. Instructions. --The mine foreman shall see that every person employed to work at such mine shall, before the beginning work therein, be instructed in the particular dangers incident to his work in such mine, and be furnished a copy of the state surface mining rules and regulations. A record of such instructions shall be kept and made available upon request by an authorized representative of the Director.

NOTE: Problem here with record keeping. Is this an attempt to mimic the MSHA 5000-23 form and record keeping? If so, it needs to be structured that way. This may mean initial training but can be read to mean every instruction and every task the person is instructed to do.

27 10.6. Records of examinations.

(a) All violations or hazardous conditions and the action taken to correct such violations or conditions including the pre-shift and on-shift examinations shall be recorded with ink or indelible pencil in a book prescribed by the Director of the Department of Energy Office of Miners' Health, Safety and Training, and kept for such purpose at a place at the surface mine designated by mine management at the mine office for a period of one year. ~~All records of daily, and weekly reports as prescribed herein, shall be open for inspection by interested persons, and the record book shall be kept for a period of one (1) year.~~

27 10.7. It shall be the duty of the mine foreman, assistant mine foreman to examine each mine within three (3) hours prior to the beginning of a shift and before any miner on such shift enters the active workings of the mine.

27 10.8. The mine foreman shall give prompt attention to the removal of all dangers reported to him by his assistants, or any other person working in the mine, and in case it is impracticable to remove the danger at once, he shall notify all persons whose safety is menaced thereby to remain away from the area where the dangerous condition exists.

27 10.9 For those surface mines that do not employ five or more persons in a period of twenty-four hours and that do not have a certified mine foreman, the mine operator shall designate a competent person, as defined in 56 CSR § 3-3.87, to perform the duties of a mine foreman set forth in this section. The name of the designated competent person shall be recorded and such record shall be made available upon request.

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§56-3-30 13. Excavating.

30 13.1. Loose material removal. --Loose hazardous material shall be stripped for a safe distance ~~(minimum of fifteen (15) feet)~~, except where vegetation is required to support the slope from the top of pit or highwalls, and the loose unconsolidated material shall be sloped to the angle of repose, or ~~barriers, baffle boards, screen, or other approved devices that afford equivalent protection~~

as otherwise provided for in the approved ground control plan.

~~30~~ 13.2. Benches. --When a bench is required to insure safe operations, the width and height of the bench shall be governed by the type of equipment to be used and the operations to be performed, type of material and height of wall.

~~30~~ 13.3. Highwall and spoil bank work areas.

(a) Each operator shall establish and follow a ground control plan for the safe control of all highwalls, pits and spoil banks which shall be consistent with prudent engineering design and will ensure safe working conditions. The mining methods employed by the operator shall be selected to ensure highwall and spoil bank stability.

(b) The ground control plan shall, at a minimum, address the following conditions:

i.) Benching;

ii.) Pre-splitting of the highwall;

iii.) Height of the highwall;

iv.) Angle drilling;

v.) Loose materials and trees;

vi.) Vertical mud seams;

vii.) Impounded water;

viii.) Adequate water drainage;

ix.) The angle of repose of spoil material.

NOTE: Development of another plan similar to a roof control plan. This is another way the OMHS&T can take control of an operation through a plan process. There is no provision for resolving disputes in the plan make-up, so the Director has the last word. Revised "when necessary to ensure safety" is highly subjective and open to abuse.

NOTE: "not connected with UG Mine" therefore not required for face ups and similar surface construction for UG mine. Need to emphasize.

(c) The operator shall submit the ground control plan to the Office of Miners' Health, Safety and Training for approval and such approval shall be obtained prior to implementing the plan. Any highwall failure that affects the safe working conditions of the surface mine shall be reported to the Office of Miners' health, Safety and Training within twenty-four (24) hours of the time of the failure.

NOTE: "Failure" of a highwall is highly subjective and may result in a huge up-tick in reporting of minor rock falls from the highwall.

(d) The ground control plan shall be revised when necessary to ensure safety. Any revisions to

the ground control plan shall be submitted to the Office of Miners' Health, Safety and Training for approval and such approval shall be obtained prior to implementing the revised plan.

(e) The highwall shall be sloped or benched when required by the ~~Department of Energy Office~~ of Miners' Health, Safety and Training, to prevent or minimize the danger of slide. All overhanging ledges and loose material shall be scaled from the highwall. When scaling of highwalls is necessary to correct conditions, a safe means shall be provided to perform such work.

(f) When the highwall is cracked and shows evidence of movement, or of weakening, the area shall be made safe or abandoned and dangered off.

(g) Trees endangering workmen along highwalls shall be removed. Trees that cannot be safely removed shall be barricaded and no work shall be done in the area. Such work shall be completed during daylight hours.

(h) Spoil banks shall be placed an adequate distance from the pit to prevent any material from rolling back and endangering the workmen. Spoils shall be kept free of bodies of water which would be hazardous in active work areas. Spoil material shall be sloped to the angle of repose or other measures taken to prevent the material from slothing, sliding, or rolling into the pit.

(i) Persons, other than those designated to correct unsafe conditions, shall not work near or under ~~dangerous~~ highwalls or banks.

(j) During bench loading, adequate precautions shall be taken to prevent equipment from going over a highwall.

30 13.4. Examinations.

(a) Should a slide occur, a certified foreman or assistant shall examine the area of the slope for danger of additional slides. No person shall work in the area until the examination is complete and the area declared safe.

NOTE: How is a "Slide" different from a "failure" of highwall? How do you define a "slide"? These are all highly subjective and need some definition.

30 13.5. Repairs in excavation areas. --Special safety precautions shall be taken when persons are required to perform repair work between immobilized equipment and within twenty (20) feet of the highwall or spoil bank where such equipment may hinder escape from falls or slides. A competent person shall be designated to observe the highwall or spoil bank. If equipment is mobile and repair work is necessary on such equipment, such equipment will be moved to a location out by the highwall or spoil bank.

30 13.6. Tree removal. --When men are in the area, suitable warning shall be given before equipment shoves over or uproots trees, and workmen shall be removed from the immediate vicinity.

30 13.7. Night work. --When surface mining is performed at night, the pits, highwalls, and dump areas in the vicinity of the work shall be adequately illuminated.

30 13.8. Dump areas.

(a) Safety berms shall be provided at the edge of all fill areas to prevent over- travel or overturning. The berm will consist of material end dumped and/or pushed by the fill dozer to create an adequate berm. The minimum height of the berm will be axle height of the largest rubber tire equipment working on the fill. Safety berms shall not be damaged by, or used as a stop block, by haulage equipment.

(b) Should the outer slope of the fill become steeper than the safe angle of repose, short-dumping procedures shall be initiated. Equipment operators and truck drivers operating on the fill will be informed of the steep slope condition and will be required to dump a minimum of one truck length from the edge of the fill. Short dumping shall continue until a safe angle of repose is established.

(c) In the event tension cracks appear near the outer edge of the fill, short dumping will be initiated. Equipment operators and truck drivers working on the fill will be informed of the tension cracks and will be required to dump a minimum of one (1) truck length from the tension cracks.

(d) In the event of tension cracks developing in a fill the following procedures shall be initiated:

(1) The fill dozer shall begin a cut a safe distance back from tension crack. The cut will extend forward to the edge of the fill.

(2) The dozer operator will take special precautions to prevent over- travel at the edge of the fill. This procedure will be utilized until the tension crack is removed.

(3) Material will be dumped at the back edge of the cut and pushed in place by the fill dozer to reestablish the safe working elevation. Should additional tension cracks occur these procedures will be repeated.

(e) The surface of the fill shall be graded/sloped to prevent water from impounding near the edge of the fill.

NOTE: There are a number of undefined terms here and difficult concepts. Safe angle-of-repose changes with the material, particle size, moisture content, weather, etc. "Safety berms shall not be damaged by, or used as a stop block, by haulage equipment" indicates no tire tracks. Is this practical?

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§56-3-33 16. Underground Workings.

33 16.1.

(a) The operator shall refrain from surface mining within five hundred (500) feet of any active and abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners: **Provided**, That the director shall permit an operator to mine near, through or partially through an abandoned underground mine or closer to an active underground mine if: (a) the nature, timing and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities are coordinated jointly by the operators involved and approved by the Director of the Department of Energy Office of Miners' Health, Safety and Training, and (b) such operations will result in improved resource recovery, abatement of water pollution or elimination of hazards to the health and safety of the public: **Provided**, That any breakthrough which does occur shall be sealed.

(b) The official representative of any known underground mine shall be notified immediately when a surface mine operation may in any way interfere with the safe operation of the active underground mine.

(c) Special precautions shall be taken to protect the employees where excavating is being performed in the vicinity of a known abandoned underground mine which may contain a dangerous accumulation of water and/or gas.

(d) All cut-through into underground mine workings shall be closed immediately.

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§ 56-3-19 Highwall Mining

NOTE: This entire section does not have adequate thought on it's impact on the operations. There are several undefined terms and concepts. This section needs a complete rewrite.

19.1 General Precautions

(a) Highwall mining plans shall be formulated to minimize the possibility of the unplanned collapse of partitions between the miner entries. Partitions of coal between miner entries shall be adequate to support the highwall when mining operations are being performed.

(b) Highwalls shall be safely constructed to minimize danger to workers by techniques such as (1) pre-splitting highwalls, (2) angle drilling, (3) safety benches and (4) scaling of loose/hazardous materials, brows, and overhangs.

(c) Adequate means shall be taken to allay coal dust being thrown into suspension in harmful or explosive quantities.

(d) Dust shall be controlled by the use of permissible dust collectors or other approved methods.

NOTE: This makes the assumption that there will be some kind of dust control in place.

(e) The face of all highwalls, for a distance of one hundred (100) feet on both sides of the highwall miner, shall be inspected by the foreman and highwall miner operator before any mining operation shall be performed.

(f) The pit in which the highwall miner is being used shall be of sufficient width to safely operate all equipment used during the mining process.

(g) No unauthorized person shall be allowed in the area where highwall mining is being conducted.

(h) Danger signs shall be conspicuously posted at all entrances to the area where highwall mining is being conducted.

(i) Completed entries shall be blocked with highwall spoil to a minimum height of one foot above the coal bed and to within one thousand (1000 feet) of the active workings. Adequate precaution shall be taken to insure against unauthorized entry when any highwall miner openings are not blocked.

NOTE: Should this be required have the openings covered a foot above the OPENING instead of the COAL SEAM?

(j) No smoking or open flames shall be permitted within one hundred fifty (150) feet of highwall miner openings. No smoking signs shall be conspicuously posted in the pit where the highwall miner is operating or in pits where highwall miner openings are present.

NOTE: Should there also be an exception for cutting/ welding when done in accordance with regulations?

(k) Records and maps shall be kept showing the height, width, depth, and spacing of all entries mined.

(l) At the close of the highwall mining operation, maps shall be submitted to the Office of Miners' Health, Safety and Training for map archiving purposes.

NOTE: Part of mapping requirements. How measured and certified? Not required in mapping section! Why only at the close. That could involve years of mining.

(m) All maintenance on the continuous highwall miner shall be performed a safe distance away from the highwall. For continuous highwall miners equipped with canopy protection, the continuous highwall miner shall be pulled back under the canopy for servicing or routine maintenance. No routine maintenance or servicing shall occur at the highwall entry.

(n) A portable fire extinguisher containing a nominal weight of at least five (5) pounds shall be kept on each piece of mobile equipment.

19.2 Proximity To Underground Workings

(a) Highwall mining shall not be performed within five hundred (500) feet of any active or abandoned mines without complying with 56 CSR § 3.33. Highwall mining shall not (a) disrupt the ventilation systems of the underground mines, (b) create inundation hazards to active underground mines, and (c) cause damage to the roof or ribs of active underground entries.

(b) Highwall mining shall not intersect active or inactive mine workings.

NOTE: Should be allowed under 56CSR 3-33.1?

(c) In addition, highwall mining shall be conducted in accordance with 56 CSR § 3-33.1.

19.3 Proximity to Wells

(a) No highwall mining shall occur within fifty (50) feet of any well or hole drilled through the coal seam unless prior approval is obtained from the Office of Miners' Health, Safety and Training.

(b) Highwall mining into and through wells or holes drilled through the coal seam shall not be permitted unless such wells or holes are plugged in a manner approved by the Office of Miners' Health, Safety and Training.

NOTE: Too broad. Gas/oil wells should be permitted the same as an UG mine. Holes may include core holes or other test holes. Need to define the different holes and how to be treated. Survey standards, etc. Mapping issues.

19.4 Protection Of Workers.

(a) No person(s) shall enter a highwall miner opening for any reason without written approval

from the Office of Miners' Health, Safety & Training. No person(s) shall enter a highwall miner opening for any reason unless that person(s) possesses a valid West Virginia underground coal miner certificate. The operator must submit a plan for approval that includes the following provisions:

(1) Written notification shall be submitted to the Office of Miners' Health, Safety & Training regional office. This notification shall include details of the specific problem and the reason(s) workers will have to enter the highwall miner opening.

(2) The operator shall submit a plan and must receive written approval from the Director or the Regional Supervisor of the Office of Miners' Health, Safety & Training, which will detail the precautions necessary to safely perform the duties involved.

(3) In order to safeguard workers, when anyone enters the highwall miner opening(s), all West Virginia underground mining laws and regulations shall apply.

NOTE: Too Broad. Must limit and explain with a different section or maybe under ground control plans?

(b) All travel ways and work areas shall be maintained in good condition. Safe means of access shall be provided to all work areas of the highwall miner system.

(c) Adequate guarding shall be provided on all moving equipment parts where workers could be injured by movement of these parts.

(d) All persons working around a highwall miner shall wear protective clothing including, but not limited to, safety helmets and safety-toed boots.

(e) Adequate illumination shall be provided when the highwall miner system is operated in darkness or low visibility conditions.

(f) A positive audible or visible warning system shall be installed and operated to warn persons that conveyor equipment is to be started.

(g) Unguarded conveyors with walkways shall be equipped with emergency stop devices approved by the Director.

(h) Good visibility shall be provided for the highwall miner operator to the launch area of the machine.

(i) Two-way communication shall be provided between workers on the launch area and the highwall miner operator.

(j) Partitions of coal (web & barrier pillars) between the highwall miner openings shall not be recovered by other methods of mining without the written approval of the Director of the Office of Miners' Health, Safety & Training.

(k) Trailing cables shall be adequately protected to prevent damage.

(l) Mine operators shall require all people handling energized portable trailing cables to wear approved and tested insulated workmen's gloves. All such protective equipment shall be furnished by the operator. Rated gloves used when handling energized portable trailing cables shall be electrically tested every thirty (30) days and a record of that test shall be kept for one (1) year and made available to a representative of the Director upon request.

NOTE: Is this requirement necessary? Should there be a voltage limit?

(m) All steps, handrails, walkways and platforms on the highwall miner shall be maintained in a safe condition. Employees shall be instructed and required to use access steps located at the rear of the launch when the highwall miner is in the mining position near the highwall. Handrails shall be provided for all elevated platforms and walkways.

(n) Panic line/pull cords shall be installed and in place directly beside the unguarded conveyor

belt (belly belt) at all times when the belt is running and the highwall miner cars are not in position above the belt acting as a guard. When panic line/pull cords are detached to facilitate adding or removing highwall miner cars, workers shall follow a procedure that does not expose them to working above the running unguarded conveyor belt.

19.5 Operation Of Highwall Miners.

(a) No person or persons, other than the highwall miner crew, shall be allowed on or around the highwall miner when in operation unless in the line of duty.

(b) The operator shall not leave the controls while the highwall miner is being operated. Before leaving the controls for any reason, the operator shall place controls in the neutral position and de-energize the controls to prevent accidental activation of the controls.

(c) No persons shall work under suspended tools, equipment or machinery. Where needed, tag lines shall be used to guide machinery into place.

(d) Persons shall keep clear of the coal conveyance system while in motion and shall not cross over or pass under the conveyance system, except where safe crossing facilities are provided. Persons shall keep clear of conveyance system sections being swung, lowered or loaded in position.

19.6 Methane And Oxygen

(a) Highwall mining shall not be conducted in the vicinity of highwall miner openings or auger holes emitting dangerous quantities of methane or oxygen deficient air, until the atmosphere has been rendered harmless.

NOTE: Entirely too broad and open to interpretation. Must explain and limit. Is it wise to put someone next to the highwall to examine old openings? How is the test made? Where is it made?

(b) Internal combustion engines in the vicinity of highwall miner openings shall be stopped while the highwall miner entries are being inspected.

(c) No material or equipment shall be stored in highwall miner openings.

(d) All highwall mining operations shall have an approved and fully functional detector(s) capable of measuring oxygen deficiencies and methane levels on site. There shall be at least one (1) person qualified in the care and use of the approved detecting/measuring device(s). All tests for oxygen deficiency and methane will be conducted with approved detectors.

(e) If at any time unsafe methane levels or oxygen deficient air is detected, no further work shall be performed until the atmosphere has been made safe.

NOTE: Entirely too broad and open to interpretation. Must explain and limit. What is unsafe? What is too high?

(f) When a highwall miner opening penetrates an abandoned mine or mined out area(s) of an underground mine, mining shall cease immediately and tests for methane and oxygen deficiency shall be made at the mouth of the hole by a qualified person. These tests shall be made using approved devices to determine if dangerous quantities of methane and/or oxygen deficient air are present or being emitted. If such is found, no further work shall be performed until the atmosphere is made safe.

(g) The highwall miner shall be equipped with a monitoring device that will alert the operator when methane levels reach concentrations of 1.0%, at which time the cutter head will be lowered and the machine shut down. All launch workers will be removed from the immediate area and a methane examination will be conducted at the drift opening. Methane levels will be tested at the drift opening and observed on the mining machine monitor. When the test at the drift opening cannot detect significant levels of methane and the mining machine monitor indicates that methane accumulation has dispersed, work may resume. In the event the miner is de-energized when the methane monitor detects 2.0% methane or a 1.0% reading continues for a sustained amount of time, all underground equipment will be de-energized and removed by hydraulic cylinders or other means outside the opening. The opening that was being mined will be abandoned at this time.

***NOTE: Entirely too broad and open to interpretation.
Must explain and limit.***

(h) All methane examinations will be recorded in the examination book maintained by the supervisor, along with necessary explanations. Methane monitors will be visually inspected prior to the start of each new entry. Methane monitors will be tested monthly, using manufacturers test apparatus.

19.7 Highwall Miner Cable Reels

(a) All cable reels shall be guarded in such a manner so as to prevent any person from coming in contact with any cables and/or moving parts.

(b) At no time shall persons position themselves in front of the cable reels on top of the system while the system is in operation except when the following guidelines are followed:

(i) The reels are being controlled from the top level with visual contact with all persons on the top deck.

(ii) If the cable guide malfunctions, efforts shall be made to start repairs as soon as possible.

(iii) All persons that are required to work in this area shall be made aware of the malfunction.

(iv) At no time shall any person hand guide cables onto the cable reels.

§56-3-36 20. General Provisions.

36 20.1. Horseplay - Horseplay, practical jokes, wrestling, fighting or other actions which threaten persons with personal injury, causing them to fear for their personal safety or causing damage resulting in interference with safe operations shall be prohibited.

36 20.2. Alcohol and drugs - Persons under the influence of alcohol or drugs shall not be permitted on a surface mine or attendant facility. An authorized representative of the director may cause any miner to be withdrawn from the mine and request the mine operator to search and/or test the miner for alcohol, drugs or drug paraphernalia.

***NOTE: Entirely too broad and open to interpretation.
Must explain and limit. If the State wants someone searched,
they should search them. Can the Operator refuse the "request"
to search or test? What if the Operator has no drug policy or is
prohibited by contract?***

~~36~~ 20.3. Housekeeping - Paths, walkways, stairways, and roadways shall be kept free of obstructions. Structures and inside work areas shall be kept free of oil, coal spillage, litter, and coal dust accumulations.

~~36~~ 20.4. Smoking - Smoking or open flames shall not be permitted in the following areas: Within 50 feet of the area where explosives are being stored, handled, or used ~~storage area~~; Within 150 feet of flammable liquid storage areas; Within 150 feet of liquified and nonliquified gas storage areas; Within 150 feet of the proximity of auger holes; Within 150 feet of highwall miner openings.

~~36~~ 20.5. Compressed air or gases.

(a) Safety chains or suitable locking devices shall be used at connections to machines or high-pressured hose lines where a connection failure would create a hazard.

(b) Compressors and compressed-air receivers shall be equipped with automatic pressure relief valves, pressure gauges, and drain valves.

(c) All hoses exceeding one-half (1/2) inch inside diameter shall have a safety device at the surface of supply at the branch line to reduce pressure in case of hose failure.

~~36~~ 20.6. No working alone - No person shall be assigned, or allowed, or be required to perform work alone in any area where hazardous conditions exist that would endanger his safety unless he can communicate with others, can be heard, or can be seen.

~~36~~ 20.7. Stockpiles - Coal shall not be stockpiled at or near exposed or buried gas lines.

~~36~~ 20.8. Reclaiming hazards - No person shall be permitted to walk or stand immediately above a reclaiming area at or near a slurrage or storage pile where the reclaiming operations may expose him to a hazard.

20.9. Toilet facilities - Each operator of a surface mine shall provide at least one sanitary toilet in a location convenient to each surface work site. All sanitary toilets shall be regularly maintained in a clean and sanitary condition.

20.10. Drinking water – An adequate supply of potable water shall be provided for drinking purposes in each surface installation and at each surface worksite of the surface mine. Water transported to all work sites shall be carried, stored and otherwise protected in sanitary containers.

NOTE: There are a number of issues around the water provision. Does this give the implicit right to stop at any time and go get a drink?

20.11. Persons entering a mine – Only authorized persons shall be permitted to enter a surface mine. The mine operator shall develop a plan to account for those authorized persons while at the surface mine. The plan shall be available to a representative of the Director upon request.

NOTE: Requires check-in / check-out system. Who is authorized person? There are a number of issues around the

water provision.

§56-3-~~37~~ 21. Electricity.

~~37~~ 21.1. Performance of electrical work.

(a) No electrical work shall be performed on low-, medium-, or high-voltage distribution circuits or equipment, except by a qualified person or by a person trained to perform electrical work and to maintain electrical equipment under the direct supervision of a qualified person. Disconnecting devices shall be locked out and suitably tagged by the person who performs such work, except that in cases where locking out is not possible, such devices shall be open and suitably tagged by such person. They shall be removed only by the person who installed them or if such person is unavailable, by a qualified person authorized by the operator or his agent. Suitably tagged, as used in these sections, means that a sign such as, "Danger, Hands Off, Do Not Close, Men Working On Line", shall be attached to the locked switches. The signs or tags shall bear the name, date, and certification of the workman who installed the tag. Keys used to lock out switches shall be kept only on the person who is performing the work on the equipment and his immediate supervisor.

Such locks shall be provided by the operator.

(b) All power circuits and electrical equipment shall be de-energized before work is performed on such circuits and equipment, except when necessary for troubleshooting or testing.

~~37~~ 21.2. Transformers.

(a) All surface transformers, unless of the construction which will eliminate shock hazard, or unless installed at least eight (8) feet above ground, shall be enclosed in a house or surrounded by a fence at least six (6) feet high. If the enclosure is of metal, it shall be grounded effectively, the gate or door to the enclosure shall be kept locked at all times, unless authorized persons are present.

(b) Transformers shall be provided with adequate overload protection.

(c) "Danger - High Voltage" signs with voltage indicated shall be posted conspicuously at all transformer enclosures, high potential switch boards, and other high potential installations.

(d) Ground fields shall be installed and maintained at a resistance not to exceed five (5) ohms.

NOTE: Needs a grandfather period before it applies to all locations.

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(g) Guy wires from poles supporting high voltage power lines shall be securely connected to the system grounding medium or shall be provided with insulators rated at the highest voltage installed near the pole end.

(h) At preparation plants, shop areas, surface mines, and all other surface areas 120/240 volt AC circuits used to power electrical devices used in wet locations shall be protected with ground fault circuit interrupting devices.

NOTE: Need a grandfather period before it goes into effect.

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42 26.2. Operation of shovel, draglines, tractors, backhoes, loaders, etc.

(a) No person(s) shall enter the work area of any mobile equipment until first making positive contact either audible or visual with the equipment operator(s). Equipment operators shall cease operating their equipment when any person is within such proximity as to be endangered.

(b) At startup or anytime mobile equipment is stopped, other than during the normal work cycle, ~~Operators of shovels, draglines, and backhoes~~ shall sound a signal distinguishable from the surrounding noise level such as a whistle, bell, horn or other approved device, before moving forward or backward, and all persons not in the clear shall respond immediately.

NOTE: Does this need to exclude passenger vehicles and light trucks?

(c) Equipment operators shall not leave their cabs without lowering all raised equipment to the ground.

(d) When the equipment operator is present, men shall notify him before getting on or off his equipment.

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42 26.15. Hand-held tools, power tools and safety devices.

(a) Conditions of tools - all tools, power tools and similar equipment shall be maintained in a safe condition.

(b) Hand-held power tools shall be equipped with controls requiring constant hand or finger pressure to operate the tools or shall be equipped with friction or other equivalent safety device.

(c) Employers shall not issue or permit the use of unsafe hand tools.

(d) Adjustable, pipe, end and socket wrenches shall not be used when jaws are sprung to the point that slippage occurs.

(e) Impact tools such as drift pins, wedges, and chisels, shall be kept free of mushroomed heads.

(f) The wooden handles of tools shall be kept tight and free of splinters or cracks and shall be kept tight in the tool.

(g) Electric power operated tools shall be approved double-insulated or grounded type.

(h) Only proper hoisting equipment shall be used for hoisting or lowering tools. The use of hoses or electric cords for such purpose is prohibited.

(i) Pneumatic power tools shall be secured to the hose by some positive means to prevent the tools from becoming accidentally disconnected.

(j) Safety clips or retainers shall be securely installed and maintained on pneumatic impact (percussion) tools.

(k) The manufacturer's safe operating pressure for hoses, pipes, valves, filters, and other fittings shall not be exceeded.

(l) All fuel powered tool engines shall cease operations while being refueled, serviced, or maintained.

(m) When fuel powered tools are used in enclosed spaces, the applicable requirements for concentrations of toxic gases and use of personal protective equipment shall apply.

(n) Only approved fuel containers shall be used, and such containers shall be safely stored.

(o) All hand-held tools, power tools and safety devices shall be used and maintained in

accordance with manufactures specifications.

NOTE: Almost all manufacturers unreasonably limit the scope of use of their equipment in the specifications and instructions so as to limit their own liability. This can be a huge problem. How do you keep a file of all equipment manuals and abide by every letter in them? This is an impossible task and an unreasonable one.

XX

26.21 Operating equipment on extreme slopes.

(a) Extreme Slope. An extreme slope is any slope greater than a 2:1 slope.

(b) Prior to any equipment operating on an extreme slope, a meeting shall be conducted with a mine foreman and all persons involved in working on the extreme slope to develop a written plan as to how the equipment operators shall work on the extreme slope safely. The written plan shall specify the extreme slope work area and shall address the following variables:

NOTE: Is this reasonable to require those specific persons to be a part of developing unique plans for each site and time? Why not a generic plan or some other mechanism? Does this compromise having the ability to react to unforeseen circumstances? What if the persons required to participate in the plan either refuse or take 4-5 hours to "discuss" it?

1 Length of slope;

1 The type of landing at the bottom of the extreme slope;

1 Soil conditions including the ground pressure, the size and number of rocks on the extreme slope, weather conditions and visibility;

1 Whether the equipment operating on the extreme slope is designed for such conditions;

5. Competence of the equipment operator.

(c) A record of that meeting and written plan shall be kept for one (1) year and made available to a representative of the Director upon request.

(d) In the event changes occur in the variable(s) listed in paragraph (b), of this subsection, another meeting with a mine foreman and all persons involved in working on the extreme slope shall occur addressing the changing variable(s) and how work shall continue safely.

(e) No equipment shall be used on an extreme slope unless that equipment possesses an approved ROPS and the equipment operator uses a seatbelt.

(f) No equipment shall operate on an extreme slope unless the equipment operator is able to see the full length of the extreme slope.

(g) While working on an extreme slope, a sufficient landing area shall be maintained at the bottom of the slope consistent with the size of the equipment.

(h) No person shall work below the extreme slope equipment operator or in other areas where they could be affected by people working on extreme slopes

(i) When variables dictate some safeguard must be utilized. The following safeguards are considered acceptable: cable winching; drilling and shooting the slope to lessen the degree of the slope; benching to lessen the degree of the slope; and adding additional materials to lessen the degree of the

slope. Other forms of safeguard can be utilized if they provide a equal or greater level of safety.

(j) When cable winching is utilized as the safeguard for operating equipment on extreme slopes, the operator shall follow the manufacturer's specifications and limitations of the mobile equipment, wire ropes, and all attachments.

(k) When cable winching the following requirements must be met:

(1) The equipment being used to assist a dozer, or other equipment working on slopes shall be of proper size and strength to provide adequate anchorage. The equipment providing anchorage shall be positioned to provide maximum stability.

(2) The winch line assembly shall be of proper size and strength, and properly maintained to provide safety for all equipment.

(3) Winch cables used by equipment working on slopes shall be of proper size according to manufacturer's specifications.

(4) Winch cables shall be secured to the winch assembly drum according to the manufacturer's specifications.

(5) A minimum of three (3) wraps of winch cable shall remain on the drum at all times.

(6) The live-end connection device used to secure the two pieces of equipment together shall be of a design that minimizes the possibility of accidental disconnection. The connection device shall be of the proper strength for the duties performed and maintained in safe condition according to manufacturer's specifications.

(7) All winch cables shall be securely fastened to the live-end connection device by the proper number of wire-rope clamps, or properly wedged according to the manufacturer's specifications.

(8) All components of the winch line assembly shall be inspected by the equipment operator periodically during daily operations.

(l) Constant communications either audible or visual shall be maintained between equipment operators while working on extreme slopes. No one shall work on an extreme slope alone.

§56-3-43-27. Ramps, Tipples, Cleaning Plants Coal Handling Facilities, and other Surface Areas.

43 27.1. Surface installations generally.

(a) Surface installations, generally all mine structures, enclosures, and other facilities (including custom coal preparation) shall be maintained in good condition.

(b) In unusually dusty locations, electric motors, switches and controls shall be of dust-tight construction, or enclosed with reasonable dust-tight housings or enclosures.

(c) Opening in surface installations through which men or material may fall shall be protected by railings, barriers, covers or other protective devices.

(d) Illumination sufficient to provide safe working conditions shall be provided in and on all surface structures, paths, walkways, switch panels, loading and dumping sites, working areas and parking areas.

(e) Materials shall be stored and/or stacked in a manner to prevent stumbling or falling.

(f) Compressed and liquid gas cylinders shall be secured in a safe manner.

43 27.2. Machinery guards.

(a) Gears, sprockets; chains, drive, head, tail and take-up pulleys; flywheels; couplings; shafts; saw blades; fan inlets; and similar exposed moving machine parts which may be contacted by persons, shall be guarded adequately.

(b) Except when testing is necessary, machinery guards shall be secured in place while being operated.

(c) Belt rollers shall not be cleaned while belts are in motion.

43 27.3. Ramps and dumping.

(a) Both sides of any tippie or cleaning plant dumping ramp shall be provided with securely anchored rubbing boards of ample dimensions.

(b) An adequate dumping block at least eight (8) inches high shall be installed at all dumping points, excluding stockpiles.

(c) Adequate protection shall be provided at dumping locations where persons may be endangered by falling material.

(d) Dust control measures shall be taken where dust significantly reduces visibility of equipment operators.

(e) After the effective date of these regulations, all power lines in dumping areas shall, be maintained at least a minimum of six (6) feet above the largest piece of equipment used at such facility, including a dump truck in a raised position.

(f) All dumping ramps shall be of sufficient width to insure safe operation of vehicles used thereon.

(g) At no time shall any person be permitted to enter onto any coal bin, coal crusher, or any other coal dumping facility for means of breaking or removing coal or other materials that is of such a size that it will not drop through the grizzly, or screening device of said dumping facility, unless the equipment has been tagged out, de-energized, and locked out with a key or other approved adequate safeguards approved by the director.

(h) Ramps and dumps shall be of solid construction and have ample width, clearance and head room and be kept reasonably free of accumulations of material and spillage.

(i) Truck spotters shall be used when required by an authorized representative of the director.

(j) When car couplers are to be aligned in such rotary dump areas, a hook or other device shall be used. A suitable lifting jack and handle shall be provided at any rotary dump.

43 27.4. Fire protection.

(a) Where cutting or welding is performed at any location, means of prompt extinguishment of any fire accidentally started shall be provided.

(b) Adequate fire-fighting facilities, required by the ~~Department of Energy~~ Office of Miners' Health, Safety and Training, shall be provided on all floors. At least two (2) exits shall be provided for every floor of tipples and cleaning plants constructed after the effective date of these regulations.

(c) Signs warning against smoking and open flames shall be posted so they can be readily seen in areas or places where fire or explosion hazards exists.

(d) Smoking or open flame in or about surface structures shall be restricted to locations where it will not cause fire or an explosion.

(d) In structures where compressed gases are piped through permanently installed fixtures, such fixtures shall be examined daily for leaks and damage. If leaks or damage to the fixtures are discovered, repairs shall be made immediately.

43 27.5. Repairs of machinery.

(a) Machinery shall not be lubricated or repaired while in motion, except where safe remote lubricating devices are used. Machinery shall not be started until the persons lubricating or repairing it has given a clear signal.

(b) Means and methods shall be provided to assure that structures and the immediate area surrounding the same shall be reasonably free of coal dust accumulations.

(c) Where repairs are made to tipples, or cleaning plants, proper scaffolding and proper overhead protection shall be provided for workmen when necessary.

(d) Where overhead repair work is being performed at surface installations, adequate protection shall be provided for all persons working or passing below.

43 27.6. Stairs, platforms, etc.

(a) Stairways, elevated platforms and runways shall be equipped with handrails. Railroad car trimmer platforms are exempted from such requirements.

(b) Where required, elevated platforms and stairways shall be provided with toeboards. They shall be kept clear of refuse and ice and maintained in good condition.

43 27.7. Belts, etc.

(a) Drive belts shall not be shifted while in motion unless such machines are provided with mechanical shifters.

(b) Belt dressing shall not be applied while in motion.

(c) Belt, chains and ropes shall not be guided onto power-driven moving pulleys, sprockets, or drums with the hand except equipment especially designed for hand feeding.

43 27.8. Conveyors and crossovers.

(a) When the entire length of a conveyor is visible from the starting switch, the operator shall visually check to make certain that all persons are in the clear before starting the conveyor. When the entire length of the conveyor is not visible from the starting switch, a positive audible or visible warning system shall be installed and operated to warn persons when the conveyor will be started.

(b) Crossovers shall be provided where necessary to cross conveyors. All crossovers shall be of substantial construction with rails and maintained in good condition. Moving conveyors shall be crossed only at designated crossover points.

(c) A positive audible or visible warning system shall be installed and operated to warn persons that a conveyor or other tippie equipment is to be started.

(d) Pulleys of conveyors shall not be cleaned manually while the conveyor is in operation.

(e) Guards, nets, or other suitable protection shall be provided where tramways or conveyor belts pass over roadways, walkways or buildings.

(f) Where it is required to cross under a belt, adequate means shall be taken to prohibit a person from making contact with a moving part.

43 27.9. Tipple or cleaning operations.

(a) At least two (2) persons shall be continuously employed in the operation of a tipple or cleaning plant.

(b) Good housekeeping shall be practiced in and around tipples and cleaning plants. Such practices include cleanliness, orderly storage of materials, and the removal of possible sources of injury, such as stumbling hazards, protruding nails and broken glass.

(c) Adequate ventilation shall be provided in tipples and preparation plants.

(d) Coal dust in or around tipples or cleaning plants shall not be permitted to exist or accumulate in dangerous amounts.

43 27.10. Travelways.

(a) Safe means of access shall be provided and maintained to all working places.

(b) Travelways, platforms and other access to areas where persons are required to travel or work, shall be kept free of all extraneous material and other stumbling or slipping hazards.

(c) Inclined travelways shall be constructed of nonskid material or equipped with cleats.

(d) Regularly used travelways shall be salted, sanded or cleared of snow and ice as soon as practicable.

43 27.11. Ladders.

(a) All ladders shall be securely fastened. Permanent ladders more than ten (10) feet in height shall be provided with backguards.

(b) Ladders shall be of substantial construction and maintained in good condition.

- (c) Wooden ladders shall not be painted.
- (d) Fixed ladders shall not incline backward at any point unless equipped with backguards.
- (e) Fixed ladders shall be anchored securely and installed with at least three (3) inches of toe clearance.
- (f) Side rails of fixed ladders shall project at least three (3) feet above landings, or substantial handholds shall be provided above the landing.
- (g) No person shall be permitted to work off of the top step of any ladders.
- (h) Metal ladders shall not be used with electrical work, where there is danger of the ladder coming into contact with power lines or an electrical conductor.
- (i) The maximum length of a step ladder shall be twenty (20) feet and an extension ladder sixty (60) feet.

43 27.12. Hoisting.

- (a) Hitches and slings used to hoist materials shall be suitable for handling the type of material being hoisted.
- (b) Persons shall stay clear of hoisted loads.
- (c) Tag lines shall be attached to hoisted materials that require steadying or guidance.
- (d) A hoist shall not lift loads greater than the rated capacity of the hoist being used. 43 27.13.

Drawoff tunnels.

- (a) When it is necessary for a tunnel to be closed at one (1) end, an escapeway not less than thirty (30) inches in diameter (or of the equivalent, if the escapeway does not have a circular cross section) shall be installed which extends from the closed end of the tunnel to a safe location on the surface; and if the escapeways is inclined for more than thirty (30) degrees from the horizontal, it shall be equipped with a ladder which runs the full length of the inclined portion of the escapeway. All escapeways shall be adequately illuminated.
- (b) Tunnels located below stockpiles, and coal storage silos, shall be adequately ventilated to maintain concentrations of methane below one percent (1%) per centum.
- (c) Communications shall be provided near the entrance to the escapeways in drawoff tunnels
- (e) Self Contained Self Rescuers for all persons working in the drawoff tunnel shall be provided and stored near the entrance to the escapeway.

NOTE: In cases where illumination in escape tunnel results in less than 30-in diameter, can it be grandfathered?

NOTE: Does this require quarterly SCSR training for all surface people?

NOTE: How are the SCSR's to be protected from extreme heat/cold and conditions?

XX

§56-3-48 Mine map.

NOTE: This is a copy of 75.1200 regulations. This is poor and needs more thought and work. This needs to be correlated with the other mapping-related portions of the regulations.

NOTE: First there should be a definition of objectives: (1) is the safety of all those affected by the site DURING and AFTER operations; (2) records for future operators and others to use when doing future mining and non-mining work; and (3) efficient

production from the operation. These have not been addressed in these revised regulations.

48.1 The operator shall maintain an accurate and up-to-date map of the mine, on a scale of not less than 100 nor more than 500 feet to the inch, at or near the mine, in an area chosen by the mine operator, with a duplicate copy on file at a separate and distinct location, to minimize the danger of destruction by fire or other hazard.

NOTE: Does up-to-date include temporary notations? What is update schedule required? Is the duplicate map complete with up-to-date notations? Needs to be better thought through. Scale not a problem with CAD. Fireproof repository?

NOTE: Temporary notations should include locations of active work; roads discontinued and barricaded; location of temporary power lines and substations; locations of fire fighting equipment; locations for loading water trucks; locations of explosive magazines; temporary and permanent loading points, roads (permanent and temporary) etc. etc.

The map shall show:

- (a) Name and address of the mine;
- (b) The property or boundary lines of the active areas of the mine;

NOTE: Need more identifying and location info like permit numbers, Lat-Lon, etc. should also have Lat-Lon specified at active pit locations and names so someone can call Healthnet and give those coordinates for helicopter landing. .

(c) Contour lines passing through whole number elevations of the coalbed being mined. The spacing of such lines shall not exceed 25-foot elevation levels, except that a broader spacing of contour lines may be approved by the District Manager for steeply pitching coalbeds. Contour lines may be placed on overlays or tracings attached to mine maps.

NOTE: 25-foot intervals are too far apart. Suggest 10 foot intervals. Need description of contour density. All references need to be to "coalbed(s)" and should be of greater than 18- or 24-inches thick. Should allow multiple seam mines to use overlays.

(d) The general elevation of the coalbed or coalbeds being mined, and the general elevation of the surface;

(e) Either producing or abandoned oil and gas wells and lines located on the mine property;

NOTE: Should include all holes penetrating the coalbed(s) being mined.

(f) The location and elevation of any body of water dammed or held back in any portion of the mine: Provided, however, Such bodies of water may be shown on overlays or tracings attached to the mine maps;

(g) All prospect drill holes that penetrate the coalbed or coalbeds being mined on the mine property;

NOTE: Need to distinguish between mine property and mine boundary being mined. Confusion. Also need to make this ALL holes penetrating the coal seam. This would not include a mine shaft!

(h) All auger, highwall miner and strip mined areas of the coalbed or coalbeds being mined on the mine property together with the line of maximum depth of holes drilled during auger and highwall mining operations.

NOTE: Auger/Highwall penetrations: just the maximum depth? May not be representative or accurate of the mine. Should have some level of accuracy and be traceable back to an individual?

(i) All worked out and abandoned areas;

(j) The location of railroad tracks and public highways leading to the mine, and mine buildings of a permanent nature with identifying names shown;

NOTE: Underground utilities? Gas lines? Power lines? Other features?

(k) Underground mine workings underlying and within 1,000 feet of the active areas of the mine;

(l) The location and description of at least two permanent base line points, and the location and description of at least two permanent elevation bench marks used in connection with establishing or referencing mine elevation surveys; and,

NOTE: Should be on State Plane if possible;

NOTE: There are a number of other features that should be included such as: availability; (6-mo) progress maps; filing with State for abandonment; allowance for aerial mapping; allowance for GPS and tolerances for such; notes on temporary notations; notes on tolerances or accuracy of surveying; backfill and valley fills; locations of UG features that are covered up; include auger and highwall miner provisions and mapping requirements; etc.

(m) The scale of the map.

48.2 Certification of Mine Maps.

Mine maps shall be made or certified by an engineer or surveyor registered in the State of West Virginia.

NOTE: Need a better description to match law.

48.3 Availability of Mine Map.

The mine map maintained in accordance with the provisions of § 56-3-64 48 shall be

w/ comments – GMH – 2009-07-13

available for inspection by an authorized representative of the Director.

ORIGINAL

WEST VIRGINIA OFFICE OF
MINERS' HEALTH, SAFETY AND TRAINING
1615 Washington Street East
Charleston, West Virginia 25311

In re: Public Hearing on Rules and Regulations
Governing the Safety of Those Employed In and Around
Surface Mines in West Virginia

The Public Hearing on Rules and Regulations
Governing the Safety of Those Employed in and Around
Surface Mines in West Virginia was held on the 2nd day of
July, 2009, commencing at 9:03 a.m. and concluding at
1:02 p.m., at the Chief Logan Lodge and Conference
Center, located at 1000 Conference Center Drive, Logan,
Logan County, West Virginia, before Kristi D. Johnson,
Certified Court Reporter and Notary Public.

DeMuth Court Reporting, L.L.C.
Kristi D. Johnson, CCR
Certified Court Reporters
Post Office Box 701
Dunbar, West Virginia 25064
(304) 766-8708

A P P E A R A N C E S

On behalf of the Office of Miners' Health, Safety and
Training:

BARRY L. KOERBER, ESQUIRE
Assistant Attorney General

C.A. PHILLIPS
Deputy Director

TERRY FARLEY
Administrator

RANDALL BAILEY
Surface Inspector

H. MIKE ARMENTROUT
Surface Inspector

JOHN MEADOWS
Assistant Inspector At Large

T A B L E O F C O N T E N T S

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1 July 2, 2009

2 P R O C E E D I N G S

3 MR. KOERBER: Good morning. My name is
4 Barry Koerber and I am one of the attorneys for the
5 Office of Miners' Health, Safety and Training, and I
6 would like to thank you all for coming.

7 We are here today for a public hearing on the
8 Legislative Rules filed with the Secretary of State's
9 Office on June 2nd entitled Rules and Regulations
10 Governing the Safety of Those Employed In and Around
11 Surface Mines In West Virginia.

12 For those individuals wishing to speak, you
13 will need to sign the sign-in sheet in the back with Mr.
14 Meadows at the door.

15 We have a court reporter here today. She is
16 going to be recording all the comments so that we'll
17 have them later on when we do the responses to the
18 comments.

19 We will not respond to comments today. They
20 will be responded to at the close of the written public
21 comment period, which is July 15th. The responses will
22 be filed with the Secretary of State's Office. Also,
23 everyone here can submit written comments today. If you

1 have them, please give them to me. Otherwise, you can
2 mail them to our office on or before July 15th at 5 p.m.

3 It is my understanding that we do not have
4 anybody listed on the sign-in sheet, so is there anybody
5 here that would like to speak? If so, please come
6 forward.

7 (No response)

8 Does anybody have written comments you would
9 like to submit?

10 UNIDENTIFIED MALE: I do, but at a later
11 date.

12 MR. KOERBER: Okay.

13 We've called this hearing for nine to five,
14 and according to the posting that I put in the Secretary
15 of State's Office, we were taking a twelve to one break.
16 We're going to hang around because I don't know if
17 somebody's going to come in late or what, but I want
18 to -- anybody that desires the speak, I want them to
19 have the opportunity. But if there's nobody at this
20 moment who wants to speak, I guess we're just going to
21 be on break until somebody arrives that would desire to
22 speak. So I guess at this moment we're just sort of
23 going on a temporary break.

1 (WHEREUPON, a brief recess was
2 taken, after which the following
3 proceedings were had.)

4 (WHEREUPON, at twelve o'clock, the
5 noon recess was taken, after which
6 the following proceedings were had.)

7 MR. KOERBER: John, there is no signed
8 names on that sheet?

9 MR. MEADOWS: No, there is not.

10 MR. KOERBER: We've been on temporary
11 break since shortly after nine this morning because
12 there was no signed-up speakers for the public hearing.
13 We have waited until one o'clock so that anybody that
14 intended to come to the afternoon session would have the
15 opportunity to speak. Currently there is nobody in the
16 conference room other than OMHST personnel, however I
17 would like to officially request if anybody is present
18 that would like to speak, please come forward at this
19 time.

20 (No response)

21 For a second time, I would like to request
22 that if anybody would like to speak at the public
23 hearing they come forward at this time.

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(No response)

For a third time, I would like to request that
if anybody would like to speak at this public hearing
they come forward at this time.

(No response)

No one is answering. I adjourn this public
hearing at 1:02.

(WHEREUPON, the meeting was
adjourned at 1:02 p.m.)

REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,
COUNTY OF LOGAN, to-wit:

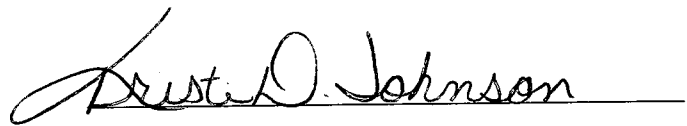
I, Kristi D. Johnson, Certified Court Reporter and Notary Public within and for the County and State aforesaid, duly commissioned and qualified, do hereby certify that the foregoing **public hearing on rules and regulations governing the safety of those employed in and around surface mines in West Virginia** was duly taken by me and before me at the time and place, and for the purpose specified in the caption hereof.

I do further certify that the said meeting was correctly taken by me in the Stenomask procedure and that the same was accurately transcribed by me.

I further certify that I am neither attorney nor counsel for, nor related to or employed by, any of the parties to the action in which this meeting was held, and further that I am not a relative or employee of any attorney or counsel employed by the parties or financially interested in the action.

Given under my hand this 2nd day of July,
2009.

My commission expires September 28, 2016.

A handwritten signature in cursive script, reading "Kristi D. Johnson", is written over a horizontal line.

Certified Court Reporter &

Notary Public



Office of Miners' Health, Safety and Training
Public Meeting
July 2, 2009

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PUBLIC HEARING
on
RULES AND REGULATIONS GOVERNING THE SAFETY OF THOSE
EMPLOYED IN AND AROUND SURFACE MINES IN WEST VIRGINIA

JULY 2, 2009

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