

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

Form #4

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

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

CITE AUTHORITY: W. Va. Code § 11-13BB-13

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: n/a

TITLE OF RULE BEING AMENDED: n/a

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 14

TITLE OF RULE BEING PROPOSED: Rules Governing the Application Process for the West Virginia Innovative
Mine Safety Technology Tax Credit Act

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

Angel R. Moore
Authorized Signature

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TITLE 56
LEGISLATIVE RULES
OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES 14
RULES GOVERNING THE APPLICATION PROCESS
FOR THE WEST VIRGINIA INNOVATIVE MINE SAFETY TECHNOLOGY
TAX CREDIT ACT

§ 56-14-1. General.

1.1. Scope. This rule governs the application process for the West Virginia Innovative Mine Safety Technology Tax Credit Act.

1.2. Authority. W. Va. Code § 11-13BB-13

1.3. Filing Date. June 28, 2011

1.4. Effective Date. _____

1.5. Applicability. This rule shall apply to all taxpayers making application to the West Virginia Office of Miners' Health, Safety and Training for certification of the tax credit authorized under W. Va. Code § 11-13BB-1 *et. seq.*

§ 56-14-2. Definitions.

2.1. The term "Director" shall mean the Director of the Office of Miners' Health, Safety and Training provided for in Chapter 22A, Article 1, Section 3 of the West Virginia Code.

2.2. The term "Mine Safety Technology Tax Force" shall mean the Mine Safety Technology Task Force provided for in Chapter 22A, Article 11, Section 2 of the West Virginia Code.

§ 56-14-3. Application and Certification Process.

3.1. Until the Director has received the list of approved innovative mine safety technologies and/or safety equipment from the Mine Safety Technology Task Force, no applications for the tax credit shall be accepted.

3.2. Once the Director has received the list of approved innovative mine safety technologies and/or safety equipment from the Mine Safety Technology Task Force, the Director shall approve or amend the list in accordance with the requirements of W. Va. Code § 11-13BB-4. The Director shall publish the approved or amended list in the State Register within thirty (30) days.

3.3. The application for tax credit shall be available at all regional offices of the Office of Miners' Health, Safety and Training and shall also be available on the website www.wvminesafety.org.

3.4. The application requires the applicant to provide the following information:

- a. Applicant's name, address and telephone number,
- b. Applicant's taxpayer identification number,
- c. Mine name and permit number,
- d. Description of the approved mine safety technology and/or safety equipment,
- e. A purchase order or other means of proof that the innovative mine safety technology and/or safety equipment is in use at the mine,
- f. Whether that mine safety technology and/or safety equipment is listed on the approved list published by the Director,
- g. The applicant's qualified investment in the mine safety technology and/or safety equipment and the amount of the allowable credit,
- h. The amount the applicant seeks to apply to the applicable tax years,
- i. If the entity seeking the tax credit is a corporation, the application shall list all officers of the corporation (as registered with the West Virginia Secretary of State) together with the last four digits of each officer's social security number and be signed by an officer of the corporation,
- j. If the entity seeking the tax credit is a limited liability company, the application shall list all members of the limited liability company (as registered with the West Virginia Secretary of State) together with the last four digits of each member's social security number and be signed by one of its members,
- k. If the entity seeking the tax credit is a sole proprietor (as registered with the West Virginia State Tax Department) together with the last four digits of the sole proprietor's social security number and the application shall be signed by the owner of said sole proprietorship,
- l. The signatures on the application shall be notarized.

3.5. The applicant shall pay a one hundred dollar (\$100.00) application fee at the time the application is submitted. Applications will not be processed if the one hundred dollar (\$100.00) is not submitted with the application.

3.6. Applicants who desire to submit an application for certification shall hand deliver to the Danville, Region 3, office an original and one copy of the completed application for time stamping. The copy shall be time stamped and returned to the person delivering the application as evidence of the date and time filed. Applicants who desire to submit an application for certification electronically shall email the application to the email address found on the Office of Miners' Health, Safety and Training's website and pay the application fee utilizing the E-pay system for online orders and payments found on the same website www.wvminesafety.org.

3.7. After the application is submitted, the Office of Miners' Health, Safety and Training shall complete a computer search to determine whether any entity, officer, member or sole proprietor listed on the application owes delinquent assessments. If there are delinquent assessments owed to the Office of Miners' Health, Safety and Training, the application shall be refused and the application and the application fee shall be returned to the applicant by regular mail. If the applicant pays the delinquent assessments and returns the application with the application fee, the application will be considered a new application and processed accordingly.

3.8. All incomplete applications and application fees shall be returned to the applicant by first class United States mail.

3.9. All completed applications shall be processed, and the tax credit allocated based upon the order in which it was received.

3.10. A Letter of Certification shall be sent by first class United States mail to each eligible applicant showing the amount of the allocated tax credit.

3.11. When the two million dollars of authorized tax credit is exhausted, the remaining eligible applicants shall be sent a letter by first class United States mail informing them that the authorized tax credit amount has been exhausted.

§ 56-14-4. Objections and Hearings.

4.1. An applicant determined to be ineligible for a tax credit or whose application is rejected, may file written objections with the Director. An applicant who files a written objection pursuant to this section shall be afforded an opportunity to contest the Director's determination and the opportunity to present testimony and enter evidence in support of its position.

4.2. An objection shall be deemed timely filed if received by the Office of Miners' Health Safety and Training within ten (10) calendar days of the date of the Director's determination.

4.3. A hearing shall be conducted in accordance with the contested cases provisions of article five, chapter twenty-nine-a of the *West Virginia Code*. However, notwithstanding time requirements for notice and hearing contained *W. Va. Code* § 29A-5-1, the following time requirements shall govern the expedited administrative hearings held pursuant to this section:

4.3.a. An expedited administrative hearing shall be held within ten (10) days of an applicant's timely request for a hearing.

4.3.b. Evidence from any party must be submitted to the hearing examiner before, or at, the administrative hearing.

4.3.c. Hearings shall not be continued except by agreement of the parties or upon the most compelling of good cause. Good cause determinations will be strictly resolved in view of the legislative mandate to expedite the resolution of the issue.

4.3.d. The hearing officer shall issue a decision within ten (10) days of the date of the administrative hearing.

4.4. Either party may appeal the hearing officer's decision to the Kanawha County Circuit Court in accordance with *W. Va. Code* § 29A-5-4.